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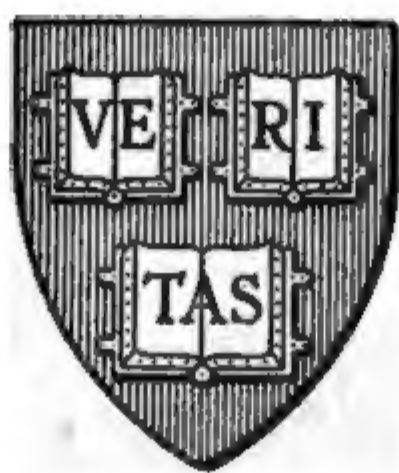
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SUPREME COURT OF THE DISTRICT OF COLUMBIA.

ANDREW WYLIE, Justice.

PROCEEDINGS IN THE TRIAL OF THE CASE

OF

THE UNITED STATES

vs.

et al.

JOHN W. DORSEY, JOHN R. MINER, JOHN M. PECK,
STEPHEN W. DORSEY, HARVEY M. VAILE,
MONTFORT C. BERDELL, THOMAS J.
BRADY, AND WILLIAM H. TURNER.

FOR CONSPIRACY.

VOL. I.

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GOVERNMENT PRINTING OFFICE.

1882.

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JOHN McSWEENY,
L. G. HINE.
SOLOMON S. HENKLE,
A. B. WILLIAMS,
C. C. COLE.

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19

IN THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA,

HOLDING A CRIMINAL TERM.

THE UNITED STATES

vs.

JOHN W. DORSEY, JOHN R. MINER, JOHN M.
Peck, Stephen W. Dorsey, Harvey M. Vaile,
Montfort C. Rerdell, Thomas J. Brady, Will-
iam H. Turner.

No. 14336.

Before WYLIE, J., presiding, and a jury.

WASHINGTON, D. C., *June 1, 1882.*

The court met at 10 o'clock and 10 minutes a. m.

Counsel for the Government and for the defendants being present.

The DISTRICT ATTORNEY. If the court please, the Government are ready to proceed with the trial of the case of The United States *against* Thomas J. Brady and others.

The COURT. Shall the court direct a jury to be impaneled?

Mr. MERRICK. Yes, sir.

Mr. INGERSOLL. Wait one moment, if the court please. [After a pause.] I would ask in the case of John W. Dorsey, and also in the case of Stephen W. Dorsey to withdraw the plea of not guilty, and to file this plea, which I will read to the court. If the court thinks proper I will be glad to have this privilege:

And the said John W. Dorsey, one of the above-named defendants, in his own proper person, comes into court here, and, having read the said indictment, and waived the reading thereof, says that the said United States ought not to further prosecute the said indictment against him, the said John W. Dorsey, because he says it was found by a grand jury illegally selected and constituted, in violation of section 2 of the act of Congress approved June 30, 1879, entitled "An act making appropriations for certain judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes." That the panel of the grand jury which found this indictment was not drawn from a jury-box containing the names of not less than three hundred persons at the time of the said drawing, selected alternately by the clerk of this court and by a well-known member of the political party in this District opposing that to which the clerk belongs, a citizen of good standing residing in the District, and appointed a commissioner by the judge of this court; but the persons composing the said panel, as the records of this court show, were selected in part by drawing their names from a jury-box containing a jury list selected by five commissioners appointed by order of the supreme court in general term, and were in part selected by the marshal of this District, said persons selected by the marshal, being the following, to wit: Robert Johnson, Robert Beall, and John T. Beall, they having been summoned at this term of the court by the said marshal; and this he, the said John W. Dorsey, is ready to verify by the records of the court.

Wherefore he prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the said indictment above specified, and that said indictment may be quashed.

I ask leave to withdraw the plea of not guilty and to file this plea; and exactly the same in relation to Stephen W. Dorsey. Of course,

the only question is whether that law is of universal application, and whether it applies in this District as well as in other districts.

Mr. MERRICK. If your honor please, when the case was last before the court various motions were presented, argued, and decided. Your honor then asked if there were any other motions, and it was stated that there were none. Counsel then announced themselves ready, both on behalf of the Government and the defendants. The two defendants, on behalf of whom this proposition is now made, were then represented in court and spoke by their counsel. I think, therefore, your honor, it would scarcely be a wise and proper exercise of your discretion to permit the plea of not guilty to be withdrawn. Dilatory motions having met us at every step in the progress of this case, the inquiry from the bench as to whether there were any other motions was a very natural and proper inquiry at the time. The reply was that there were none. Everybody had acquiesced in the fact that both sides were ready for trial, and that being the case the court adjourned before the close of the business hours of the day, having fixed the trial for to-day, with the acquiescence and consent of the counsel for the defendants who now make this motion.

Mr. INGERSOLL. All I can say in regard to this plea is that it was not until this morning that my attention was called to this clause of the statute. If I had known exactly how it was, or if my attention had been called to the statute, the motion would have been made before. I do not wish to take up the time of the court in arguing it. I merely wish to file it, and immediately afterwards I will again interpose a plea of not guilty.

The COURT. The plea of not guilty is in.

Mr. INGERSOLL. I know it is, but I have asked to withdraw it for this purpose.

The COURT. It is a matter in the discretion of the court and I do not think, after all that has taken place, it ought to be allowed. Then, too, I am of opinion that the plea is not a good plea, even if it were offered at the proper time. We have our own statutory provision as to the manner in which jurors shall be drawn. We have no provision in our law that the commissioners who draw the juries shall be one-half from one party and one-half from another party. In the District of Columbia we are all on the same side; that is, we have no parties and no political rights at all; so that the general law, in my opinion, is not applicable to this District. I cannot refer now from memory to the section, but in the revised statutes which relate to the District of Columbia, which were adopted on the same date with the Revised Statutes of the United States, we have special provision for the selection of our own juries. This petit jury and this grand jury were drawn in compliance with the provisions of our statute. The only question, as I understand it, that you propose to make by your plea, is that our statute is not applicable, and the general statute relating to circuits and districts of the United States, outside of the District of Columbia, is in force here. Well, that statute would be in force here if we had not something specially applicable to this District. I shall therefore decline to grant the motion.

Mr. INGERSOLL. I want it noted, of course, that we offer it. Will the court be kind enough to allow it to be noted upon the record that I ask leave to file this plea.

The COURT. You make a motion, and that is your right. You make a motion for the purpose set out in that paper. I overrule the motion
 1 my ruling carries the paper on the record.

Mr. INGERSOLL. I will just make a motion in writing.

The COURT. You had better reduce your motion to writing, although the object appears upon the face of the paper you read.

Mr. INGERSOLL. I know ; but it will not be in the record unless it is filed.

The COURT. It will be filed on your motion. The motion carries the paper on the record.

Mr. TOTTEN. This plea will go in, in the same manner as the other pleas.

The COURT. Certainly.

[Here a pause ensued to enable Mr. Ingersoll to reduce his motion to writing, which he did.]

The COURT. Let us hear your motion.

Mr. INGERSOLL. [Reading:]

Now comes John W. Dorsey, in his own proper person and by attorney, and moves the court, in the above-entitled cause, to permit the said defendant to withdraw his plea of not guilty, filed heretofore in the cause, and in lieu thereof to file his special plea hereto attached, marked "A."

The COURT. That special plea purports to be the plea of both the Dorseys.

Mr. INGERSOLL. No, sir. They were separate pleas, but I thought it would save the question just as well to file one. I suppose there was no impropriety in filing that.

The COURT. No.

Mr. INGERSOLL. And the order goes on the record that the plea is overruled !

Mr. MERRICK. The motion is denied.

The COURT. The motion is denied. Are there any other motions ?

[No reply was made to the interrogation of the court.]

Mr. INGERSOLL. [After a pause.] As far as the defendants are concerned, let a jury come.

The COURT. Call a jury.

The clerk called the following jurors, who came forward and took their seats in the box :

WILLIAM DICKSON.
WILLIAM T. WOOD.
JOHN B. DAWSON.
JOHN W. HAYES.
MATHEW MCNELLY.
GEORGE E. KIRK.

JOHN B. MCCARTHY.
JOHN T. FINNY.
EDWIN J. MCLAIN.
WILLIAM K. BROWN.
FREDERICK C. SHAW.
EDWIN D. DONIPHAN.

The COURT. [To counsel.] Are you satisfied with the jury ?

[No reply was made to the interrogation of the court.]

Mr. INGERSOLL. [After a pause.] Does the Government accept the twelve ?

Mr. MERRICK. I think, your honor, they might as well be sworn on their *voir dire*. Both sides want it.

The COURT. [To Mr. Ingersoll.] What was your inquiry ?

Mr. INGERSOLL. I asked if the Government accepts the jury.

The COURT. You have a right to four peremptory challenges, and both sides have a right to challenge for cause.

Mr. INGERSOLL. I understand that the Government first accepts the jury and tenders the jury to us. It is then for us to examine the jurors. If the Government accepts, of course they have no challenges left.

The COURT. [To a bailiff.] Send me the revised statutes.

Mr. MERRICK. Your honor has stated the law in reference to challenges. I ask that the jurors be sworn on their *voir dire*.

The COURT. Swear the jurors to answer severally on their *voir dire*.

Mr. MERRICK. Swear one at a time.

The COURT. Oh, no; they can all be sworn together.

Mr. GEORGE E. KIRK, a juror. [Arising and addressing the court.] I would be very glad to be excused from serving on this jury. I presume I will be challenged anyhow. I regret it very much.

The COURT. You had better take that chance.

The jurors were sworn on their *voir dire*, and

WILLIAM DICKSON was examined, as follows:

By the COURT:

Question. Have you formed or expressed any opinion with reference to the guilt or innocence of the several defendants in this case, or any of them?—Answer. These cases have been before the public for some time, and I have commented upon the newspaper statements, and in that way have expressed an opinion.

Q. Have you formed such an opinion as will interfere with an impartial consideration of the evidence in the case?—A. I have not, sir.

The COURT. I think he is competent. Reading newspapers cannot disqualify a whole community because such papers try the case in advance.

Mr. MERRICK. [To the juror.] Do you know the defendants?

The COURT. That will not do. I cannot go into that inquiry. [To the juror.] You are competent, sir.

WILLIAM T. WOOD was called and arose.

Mr. MERRICK. Does your honor allow the Government to interrogate?

The COURT. No, sir.

Mr. MERRICK. The court interrogates?

The COURT. The court puts the questions.

By the COURT:

Question. Have you formed or expressed any opinion in regard to the guilt or innocence of the defendants or any of them?—Answer. I have formed no decided opinion. I may have expressed an impression at the time I read the papers. I don't know whether I have or not. I have not expressed any decided opinion or formed one.

The COURT. He is qualified.

Mr. MERRICK. If your honor please, I do not understand precisely the ruling here as to whether or not the Government and the other side can ask any questions.

The COURT. No, except by delegation from the court.

Mr. MERRICK. Except by delegation from the court. I had understood the rule to be different in a case lately tried in this court; but I do not wish to controvert the matter in any way.

The COURT. The jurors are severally sworn to answer such questions as shall be put to them by the court touching their qualification.

Mr. MERRICK. And not by the counsel.

The COURT. And not by the counsel. Because if it was thrown open to counsel probably there would be some trouble in the selection of the jury, and the court might have to interfere at last to stop the inquiries.

Mr. MERRICK. Will your honor ask questions on behalf of either side may be suggested to you if you deem them proper questions?

The COURT. You may suggest them to the court, and the court will put them if it sees proper.

Mr. MERRICK. I would like your honor to ask Mr. Wood whether he has not discussed this question independent of the newspapers, and whether he has not formed and expressed an opinion from information derived otherwise than through the newspapers?

The JUROR. I have not.

The COURT. He is qualified. I allow you to put that question, but I do not think I can repeat it.

Mr. MERRICK. Your honor, my reason for asking the question is this: Mr. Wood is the son, as I am informed, of an exceedingly clever gentleman who is in the service of the other side as one of their detectives—if I am not very much misinformed. I presume that this has been a subject of family discussion, possibly.

The JUROR. I was not aware of the fact that my father had anything to do with this matter.

Mr. MERRICK. I understand that to be the case.

Mr. WILLIAMS. Nobody else understands it so.

The COURT. We will not go into that.

Mr. MERRICK. Very well, then, Mr. Wood is challenged.

Mr. TOTTEN. If the court please, I want to make an inquiry here. Are we expected to make our peremptory challenges as your honor proceeds in calling the names after you get through with the *voir dire*?

The COURT. I think the proper course is for the court to put its inquiries to the jurors on their *voir dire* first.

Mr. TOTTEN. I think so, too.

The COURT. [To the juror.] Mr. Wood, resume your seat.

Mr. MERRICK. I supposed your honor intended that we should take action immediately, which is the ordinary method.

The COURT. We will go through and ascertain how many will answer as jurors.

JOHN B. DAWSON was examined, as follows:

By the COURT:

Question. Have you formed or expressed any opinion with reference to the guilt or innocence of any of these defendants?—Answer. None, except what I have derived from reading the newspapers.

Q. Is that such an opinion as would interfere with your giving an impartial consideration to the evidence in the case?—A. No, sir.

The COURT. Mr. Dawson is not disqualified. Call the next.

JOHN W. HAYES was examined, as follows:

By the COURT:

Question. Have you formed or expressed an opinion with reference to the guilt or innocence of the defendants or any of them?—Answer. I have not, your honor. I never read the papers; only the headings of them; that is all. I haven't bothered myself anything about it.

The COURT. You are eminently qualified.

Mr. WILSON. The head-lines are the worst part of the newspapers, your honor.

Mr. INGERSOLL. The text hardly ever supports the head-line.

MATHEW MCNELLY was examined, as follows:

By the COURT:

Question. Have you formed or expressed an opinion with regard to

the guilt or innocence of the defendants or any of them?—Answer. I have not.

The COURT. You are qualified.

GEORGE E. KIRK was examined, as follows:

By the COURT:

Question. Have you formed or expressed an opinion with regard to the guilt or innocence of any of the defendants or all of them?—Answer. None particularly, sir. I asked to be excused in the first instance.

The COURT. That is not what I am asking you about now.

The JUROR. I was going to give my reasons for asking.

The COURT. The time has not come.

Mr. MERRICK. Probably his reason is applicable to your question, your honor, as to his competency as a juror. It does not go to his convenience, I apprehend.

The JUROR. I will say I have had some little taste of this matter myself, and it is a very delicate position to be placed in to sit upon a jury. I was interested in some of those star routes, and I will say here that I was wiped out.

The COURT. You stand as you were then?

The JUROR. Not exactly financially. I wish I did. I, of course, am here under oath.

The COURT. I want to know whether you have formed an opinion?

The JUROR. I have read the papers a great deal about it. I have heard something of it here and I knew something about it before. I suppose, perhaps, I am about the best informed person upon that subject that is here upon the jury.

Q. Are you conscious of such a bias in your mind as will interfere with an impartial consideration by you of the evidence in the case?—A. Not at all, sir, when I am here under oath.

The COURT. We will pass you and consider your other grounds afterwards.

JOHN B. MCCARTHY was examined, as follows:

By the COURT:

Question. Have you formed or expressed an opinion with regard to the innocence or guilt of the defendants or any of them?—Answer. I have not, your honor. I have never understood the case sufficiently to pay formal attention to it. I never read the papers in regard to it at all.

The COURT. Neither have I. You are competent.

JOHN T. FINNY was examined, as follows:

By the COURT:

Question. Have you formed or expressed any opinion in regard to the guilt or innocence of the defendants or any of them?—Answer. I have not, your honor. I am the same as Mr. McCarthy in regard to it. I read the papers occasionally, but I have not formed an opinion about the matter.

Q. You have no settled opinion either way?—A. I have not. I will be governed by the evidence, of course.

EDWIN J. McLAIN was examined, as follows :

By the COURT :

Question. Have you formed or expressed an opinion with regard to the guilt or innocence of the defendants or any of them ?—Answer. I have not, sir. All I know about it is what I have derived from newspaper reports.

Q. Have you any such bias in your mind as would interfere with an impartial consideration of the evidence ?—A. No ; I think I can say I am entirely without prejudice.

The COURT. He is competent.

WILLIAM K. BROWN (colored) was examined, as follows :

By the COURT :

Question. Have you formed or expressed an opinion with reference to the guilt or innocence of the defendants or any of them ?—Answer. I have not, sir.

The COURT. He is competent.

FREDERICK C. SHAW was examined, as follows :

By the COURT :

Question. Have you formed or expressed an opinion in regard to the guilt or innocence of the defendants in this case, or any of them ?—Answer. I have not. I have read the papers, and have commented upon what I have read in the papers, concerning the proceedings in court here.

The COURT. The papers did not leave much impression on your mind ?

Mr. SHAW. No.

EDWIN D. DONIPHAN was examined, as follows :

By the COURT :

Question. Have you formed or expressed an opinion in regard to the guilt or innocence of the defendants or any of them ?—Answer. I have not, sir.

The CLERK. That completes that panel.

The COURT. Have you any peremptory challenges, gentlemen ?

Mr. TOTTEN. Well, we think we have, your honor.

The COURT. Now is the time.

Mr. TOTTEN. We have a right to how many ?

The COURT. To four.

Mr. TOTTEN. And not more than that ? Are we entitled to four for all the defendants, or four for each ?

Mr. MERRICK. Four for all of them. That is the language of the statute.

Mr. TOTTEN. Well, it is not the language of the statute at all.

Mr. MERRICK. I am flatly contradicted. Probably you had better produce the statute.

The COURT. You have four peremptory challenges. You are entitled to them by law.

Mr. MERRICK. Mr. Totten says it is not so.

The COURT. Section 838 of the revised statutes is as follows :

On the trial of any person charged with a crime, the punishment whereof may be

confinement in the penitentiary or District jail, the defendant shall be entitled to four peremptory challenges of jurors.

Mr. MERRICK. The question now is, whether "any person" means all persons.

The COURT. Sir?

Mr. MERRICK. Here are a number of persons jointly indicted, or to be tried jointly. The question is whether each of them is entitled to four challenges. Is the Government entitled to challenge?

The COURT. If you can show me the authority for it.

Mr. MERRICK. Yes, sir. I have sent for the law, sir. I supposed that that was not questioned. Will your honor let me see that law that you have there. [The book was submitted to Mr. Merrick.]

Mr. INGERSOLL. If the court please, so that we will act with a view to what we consider our rights, the practice, so far as I know, in all courts in which I have ever happened to practice, has been for the Government first to tender a jury to the defendants. The Government is first to pass on the panel, say twelve men. After having challenged all they desire to challenge, or have the right to challenge, and all have been excluded for cause that should be excluded for cause, then they tender us those accepted by the Government. After having been so tendered the defendants had the right to challenge to see whether they accepted them or not. Then others would be called, and the new ones called would have to be passed on by the defendant first and tendered to the Government. Now, I suppose that that is the practice in this court. I am speaking about the selection of the jury. They tender them to us first, and if they reject any then they must tender us other jurors in the place of those we accept, and of course we claim that each defendant has four challenges, if there is any meaning in the law at all.

Mr. MERRICK. The law to which I refer, your honor, is section 819 of the revised statutes, passed in 1872, and since the passage of the statute in the statutes of the District of Columbia.

The COURT. No; the statutes of the District of Columbia were re-passed.

Mr. MERRICK. I know. The revised statutes were all passed together. But when there is any confusion or difficulty the Supreme Court say you go back to the original act:

When the offense charged is treason or a capital offense, the defendants shall be entitled to twenty and the United States to five peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States to three peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section. All challenges, whether to the array or panel, or to individual jurors for cause or favor, shall be tried by the court without the aid of triers.

I understand that that is the statute under which challenges are made in this court, and there certainly is no reason why that statute in its entirety is not applicable to the District of Columbia.

There is no feature in it which adapts it more peculiarly to the United States courts outside of the District, than to the courts inside of the District; and it is evidently a general rule laid down for the Government in the initiatory proceeding in these cases, and I presume if we were trying here a case for treason that this would be the rule of law by which it would be tried, or the rule by which the initiatory proceedings would be conducted. It covers the entire ground, and it covers all offenses, and provides for the very emergency now existing, viz, the

presence of several defendants, and unites them as one, in so far as the challenges are concerned.

The COURT. That provision relates to civil cases.

Mr. INGERSOLL. Yes, because it says, "the plaintiffs," and there cannot be more than one where the Government is concerned in a criminal case.

Mr. MERRICK. [Quoting:]

When the offense charged is treason, or a capital offense, the defendants shall be entitled to twenty, and the United States to five peremptory challenges.

The COURT. Yes; that is a case not covered by our own statute, and for that reason is applicable no doubt.

Mr. MERRICK. Very well.

On the trial of any other felony, the defendant shall be entitled to ten and the United States to three peremptory challenges.

The COURT. This is not a felony.

Mr. MERRICK. Of course not.

And in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section.

All challenges under this section.

All challenges, whether to the array or panel, or to individual jurors for cause or favor, shall be tried by the court without the aid of triers.

Now it is intended to refer to civil and to criminal cases, but it covers all criminal cases, and the word "defendants" covers all criminal cases. I suppose that it could hardly be conceived to have been the intention of Congress that where the Government in a criminal case should have three challenges, and there were five defendants, that the five defendants should have fifteen challenges and thus select their own jury as against the futile efforts provided by the Government to secure a fair one. The only fair construction of the act is, that it applies to cases where there are several defendants in a criminal proceeding.

Mr. INGERSOLL. What is the date of that?

Mr. MERRICK. This is 1872; and especially should it be applicable in a case like this where the charge is conspiracy. The charge is one. The indictment is against them all for the one general act or offense under the law of the United States. I submit to your honor the language of the law is plain and needs, I suppose, no argument in relation to it.

The COURT. Now, that law allows either side three peremptory challenges?

Mr. MERRICK. Yes, sir.

The COURT. Our own particular law allows to the defendants four. Now, is that general act which provides for the courts of the United States general? As to that particular provision in regard to the three peremptory challenges, does that supersede our own particular provision which gives the defendant four peremptory challenges?

Mr. MERRICK. In my judgment it does supersede that provision, for the reason that although these codes, so to speak, were passed on the same day, yet where there is a general law in the Revised Statutes which is inconsistent with the law in the District statutes, and which is applicable to the District, and both of them cannot therefore operate harmoniously together, you must go back to the date of the enactment of the two respective laws and see which was by that date intended to take precedence of the other.

Now, the law in reference to the District was enacted in 1867. The general law reviewing the subject was enacted in 1872, and if the law of 1872 is applicable in any of its provisions to the District it supercedes the law of 1867 so far as the District is concerned.

Now, under the law of 1867 there was, I believe, no right of challenge given to the Government. Under the law of 1872 that right of challenge is given to the Government. Now, is the Government entitled to challenge? Is not that part of the law applicable to the District of Columbia? And if that part of the law is applicable to the District *quoad* the challenges, is not the rest of the law applicable to the District of Columbia *quoad* the challenges? But there is another part of the law of 1867 which comes in conflict with no act provided for the District of Columbia, namely, that where there are several defendants they shall be regarded *quoad* the challenges, as one defendant. That conflicts with no provision of the statutes for the District of Columbia.

The COURT. There is another question: Whether it is a civil or criminal case.

Mr. MERRICK. It says criminal cases—in all criminal cases. It is one section. And then it says “plaintiffs and defendants,” and the word “defendants” covers defendants in criminal cases as well as civil cases, and it uses the words “criminal cases” for the purpose of meeting the exigencies which might arise in criminal cases and civil cases, namely, several plaintiffs. There can be but one defendant in a criminal case, and it would not have been necessary to use the word several unless they intended to apply it to several, and using the words “several plaintiffs” shows that they have not intended to apply it to both. The act applies to criminal cases, and starts out with a criminal case, and says that in all other cases, except treason and felony, such and such shall be the rights of the parties. The same section goes on further to provide for the exigency of there being more than one plaintiff or more than one defendant, so that the right of the challenge previously given to both civil and criminal cases shall be limited in both civil and criminal cases to meet the exigency. The right of challenge is given in both civil and criminal cases. That is the language of the law, I think.

And in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges.

It then goes on to provide how those peremptory challenges are to be made and how they are to be limited. There are three peremptory challenges in civil and criminal cases. Now it says that where you have more than one plaintiff, or where there is more than one defendant, they shall be treated as one as to the challenges heretofore provided. That part of the section treating them as one has reference to the preceding part of the section giving the right of challenge. The right is given in civil and criminal cases. Now, that right is limited in a certain class of cases, namely, where there is more than one plaintiff, or where there is more than one defendant. In such a case, says the law, the several plaintiffs, or the several defendants, in respect of the right of challenge heretofore given, shall be treated as one person; that there shall not be more than three in any case, civil or criminal. The latter part of the section which I have just read limiting the challenges is so interwoven with the preceding part that you cannot separate it without lacerating the entire section. Challenges are given in civil and criminal cases, the terms being express, and then it is provided that where there is more than one defendant, or more than one

plaintiff, they shall be regarded as one *quoad* the challenges previously given. It is straining the language, straining the sense, and evidently perverting the intention of the statute to claim that that limitation does not apply to criminal cases. Your honor will perceive that the intention was, plainly, where there was more than one party still there should be but the provided number of challenges. That was evidently the intention. Now, to apply it to civil cases alone is manifestly to constrain the intent, for the intent becomes manifest from the context to that sentence, and becomes manifest from the exigencies of the case. There may be twenty defendants in a conspiracy case, and are they to have sixty challenges against the Government's three? The statute was the outcome of the struggle in the legislative mind to secure fair and impartial juries and to give to the Government and the other side an equal right to secure a fair and impartial jury. Could that object possibly be accomplished according to the fullness of fairness contemplated by the legislature if the defense had an indefinite number of challenges and the Government still only had three? The purpose, the object, the intent, was equality in the exigency, and the desired purpose shows that it was to get a fair jury by the exercise of an equal right of peremptory challenge, and to construe it otherwise is not only as I said to lacerate the section, but evidently to contravene the intention of the legislature.

Mr. TOTTEN. May it please your honor, if the view of this question of my learned brother is correct, with reference to the local statute of 1867, which is 838, the section of the revised statutes is repealed as a matter of course in this court. My impression is that that statute has always been pursued in the practice of this court. Your honor, perhaps, does not remember, but the fact is that this statute which my brother has just read now, forming section 819 of the revised statutes, was a separate statute, passed on the 3d day of March, 1865, found in the 13th Statutes at Large, page 500. It is entitled "An act relating to criminal proceedings," and it starts out by declaring that in the practice in the district and circuit courts of the United States the Government shall have two peremptory challenges, and the defendant shall have ten. In 1867 there was quite a long statute passed relating to the criminal procedure in this court in the District of Columbia, and the identical words, which are now section 839, are found in that statute, giving to any person in this court charged with crime four peremptory challenges.

Mr. MERRICK. When was that passed?

Mr. TOTTEN. In 1867, on the 22d day of February. Your honor has observed the difficulties in the way of the position of my learned brother, to wit, that this statute which he has just read covers not only civil but criminal proceedings in the district and circuit courts of the United States. Now, I need not do more than remind your honor that in the civil side of this court, where we try civil cases before a jury, we are governed by the old statute of Maryland of 1797, which gives us a long panel and allows either party to strike off four, and I suppose that has been done at least twice in the present week in that court.

The COURT. About two years ago—I think it was about two years, perhaps three—I was holding the circuit court, and I held that the Maryland act of 1797, which gave the long panel, was superseded by the subsequent legislation of Congress. An appeal was taken from my decision to the general term, and they reversed me on that point.

Mr. TOTTEN. Very well, your honor, that settles this case.

Mr. MERRICK. No; it does not.

The COURT. I do not remember the number of the case. I was wrong, of course. That is all there is of it.

Mr. TOTTEN. A wrong decision well followed is better than a right one badly followed. We are entitled to our four peremptory challenges for each one of the defendants; that is, we are entitled to thirty-two. Now, this law was taken up by the revisers and passed by Congress in 1874, at the same time with the revised statutes, as your honor has just stated, so that they stand here, one of them referring to one jurisdiction and the other to numerous other jurisdictions.

My learned friend says that there is no necessity for having two different rules. But your honor will remember that the revised section which my learned friend has been reading from is consumed almost entirely in making regulations to conform the practice of the United States court to the practice in the courts of the States touching juries, grand and petit, and jury trials. Some of those sections apply generally, and some of them apply particularly to Pennsylvania, others to New York, and others to South Carolina. Your honor will find separate and distinct provisions in that very statute referring explicitly to specified localities. Now, there is every reason why this local statute should have a bearing here and why the general statute should not, outside of the fact that a local statute was passed expressly applicable here. This is the place where we are above all other communities subjected to the influences of the Government, where the citizen may be oppressed by over-energetic prosecuting officers, or wicked prosecuting officers, and it is proper, if it is proper anywhere, that the defendants should have large liberty in regard to selecting the jury which is to try them upon these charges.

[The proceedings were here suspended for the purpose of calling the grand jury, after which they were resumed, as follows:]

Mr. WILLIAMS. I want to add, in addition to what has already been said, that as I understand the rulings of the court, even at this very term, it has always been held that this statute, applicable to the District of Columbia, was not repealed but was still in force in this District. Even in a case that I tried only a short time ago, your honor made that ruling. The case was that of *The United States against Mantz*. Your honor ruled that I had four challenges, and the four were given to me under this act.

Mr. HINE. I would like to say, if the court please, in reference to this question, representing two of the defendants, that under the act the conviction of two would be proper if the jury should find that two are guilty. I shall claim that I have the right to at least four peremptory challenges for the defendants, and because it is a personal privilege. It is not a matter that may be waived or controlled in any way, excepting by the party himself, and inasmuch as my clients think that they ought to have at least those four, and, as the act provides that a defendant may have four peremptory challenges, I will attempt of course to assert that right for them.

Now, it is not true that the act of 1872 was passed subsequent to the act that is referred to as the act of 1867. It is true that the act that has been referred to as the act of 1867, locally applicable to the District of Columbia, was passed at the first session of the Forty-third Congress, in 1873-'74, Revised Statutes of the United States. It simply refers to the act of 1867 and copies it. Where there is an act that is locally applicable to a jurisdiction that tries a party, it seems to me that that act is specially applicable, and I apprehend that nowhere in any of the States, where parties have been indicted together and the act provides

that a peremptory challenge may be given to the defendants, that each defendant has not had a right to exercise his personal privilege to challenge or not challenge, as he thinks his interest may require.

Now, there are seven defendants in this indictment. What would be the result if only four challenges should be permitted? I say, or my clients say, that they have a right here to four challenges. The other five clients say, each one of them, "I want four challenges; there are persons upon that jury who are personally antagonistic to me; their animosity to me is such that they will not give me a fair and impartial trial." At least, the defendant says he thinks so. What would necessarily be the result? A clash. One defendant comes from one part of the country, and another from another part of the country, and his relations to a person who was sworn on the jury is different from the relations of another from another part of the country; and, if it be a personal right, then we cannot combine those rights and say, "Here, you must get together and harmonize amongst yourselves."

The COURT. It is entirely a statutory question.

Mr. HINE. Here we have a statute then, passed certainly as late as the one they read from, and that statute provides that a defendant shall have the right to four peremptory challenges.

Mr. INGERSOLL. It says "any defendants."

Mr. HINE. It has already been intimated by the court that as to drawing our grand juries here the local statute which provides for it prevails. Then why not mete out the same law applicable to a petit jury. I simply suggest the point. I shall claim it, of course.

Mr. MERRICK. If your honor please, this is a very important matter in this case, and upon its decision, as well as I am informed, probably depends the verdict. I will explain that hereafter when occasion for it arises may be.

Now, your honor, my learned brother who last addressed the court says that your honor has decided that we draw our juries according to the local law, and if that is true and correct as to the general law providing a somewhat different system, why should we not proceed under the local law in reference to challenging. The reason is obvious. The general law providing for the machinery which is to furnish a jury to the court is not applicable to the District, for the machinery is not here. Two different systems of organizing and drawing a jury are distinctly provided, and the question is, which shall be used? The one that is in existence and provided for the District of Columbia, or the machinery erected for the circuit courts which does not exist in the District and cannot be provided here, apart from all other questions as to its detail, for the reason that here parties are not recognized, and although men have their political sympathies and their political opinions, there is under the Constitution a law provided for them to do no overt act by which those opinions shall be manifested. They cannot vote, and voting is the criterion of political opinion, and voting *pro* or *con* on men or measures marks and designates parties, and this spot alone, of all the United States, is in contemplation of law free from the antagonisms of political opinion and ought to be free.

Now, may it please your honor, you stated just now that you had decided that the act of 1872 in its operation upon the civil tribunals of the District had repealed or modified the old law of Maryland in reference to juries. In point of fact the two laws, that of Maryland and the act of 1872, practically harmonize now in the operation of constituting a jury in a civil case, for each party has four peremptory challenges. A list is furnished each, and each strikes off four. You said that your de-

cision had been reversed by the court in general term. I have not seen the opinion of the general term, but from the date which your honor fixed to that decision I presume the Supreme Court has since that time thrown light enough upon the question to vindicate your honor's original opinion. In the case of *Page vs. Burnstine*, lately decided, a question came before the Supreme Court as to the paramount authority of two sections of the acts of Congress, one in the laws relating to the District, and one in the general statutes of the United States. It was plain that this law in the revised statutes for the District was the authority and that the other could not prevail here. The Supreme Court after considering the case fully, gave an elaborate opinion in which they declared that all laws in the Revised Statutes for the country at large not locally inapplicable to the District applied to the District, and the law in the Statutes at Large overrode the law in the District statutes.

Your honor is familiar with that case. It is unnecessary for me to read from the opinion, for it is familiar to the court, and I will, if you desire it, pass the case up to your honor. It settled that long disputed question as to how far the District of Columbia became subject to general acts of Congress apparently designed for the entire country, the District of Columbia having been therefore to some extent treated and regarded as a special locality, for which laws had to be passed specially. It had been a question much discussed through a series of years, and now, finally, in this case it is settled that all laws not locally inapplicable to the District, apparently passed for the country at large, are to be applied, and both respected and obeyed in this jurisdiction, and that case was based in part upon an act of Congress which was intended to settle also the long vexed question to which I have referred, which act provides that the supreme court of the District of Columbia shall exercise all the powers and privileges and rights and authority, and so forth, of the various circuit courts of the United States.

Now, sir, one word more in regard to these two laws. Whether the act of 1872 incorporated in the general revision repeals the other act or not is quite immaterial for the inquiry that I am now presenting to the court. The proposition which I now submit is this: That under the case of *Page vs. Burnstine*, if there be a law for the District of Columbia which contains some provisions not contained in a similar law passed by the Congress of the United States for the country at large, and the law passed by the Congress of the United States for the country at large contains provisions, all of which are applicable, or may be applicable, to the District of Columbia, then your honor will harmonize the two laws, and under a well recognized principle of statutory construction, allow both laws to stand, and apply them both in the administration of justice here.

Now the act of 1866, in the revised statutes of the District of Columbia, provides that the defendant in a criminal case may have four peremptory challenges. Insert that if you please in the act of 1872, and it in no way produces confusion or inharmony in the reading and application of the law of 1872—none whatever. If your honor chooses, and I understand from the district attorney that the court has so held, let both these laws stand, and stand together. Let the defendants have their four challenges if you please, but let the act of 1872 read as if there had been a qualification at the close, "Provided, That in criminal cases in the District of Columbia the defendant shall have, instead of three, four challenges." What then? The power of the challenge is to

exercised still under the limitations and restrictions of the act of

1872, there being no limitations or restrictions in the act of 1867. The defendant may have his four peremptory challenges in all cases where the offense is for less than a felony, but if there are more defendants than one they shall all be regarded as one; and what result do we produce? You give then to the defendant the full benefit intended to be given to him by the act of 1867. You give to the Government the benefit intended to be given to it by the act of 1872. You limit the exercise of a right given by the act of 1867, according to the limitations of the act of 1872, and both acts stand together with all the rights and all the privileges either was intended to secure to the respective parties before the court.

Now, if you can do that in the construction of two laws passed on the same day, as I understand under the rule of statutory construction the court does it, you treat these acts then, the act of 1872, as applicable to the whole United States, including the District and the act of 1867 as applicable to the District, as passed on the same day, and harmonize the two and let the authority of each prevail over this seat of government.

Now, if the position of my brother Hine is right, that it is simply a personal privilege, and it may be, and that, therefore, each defendant for himself must exercise this right, what an anomalous condition have we under that construction of the statute. For the highest crime known to law, treason, the statute gives to the defendant twenty challenges. For a conspiracy to commit a misdemeanor, where there are seven defendants, all combined in one crime, all charged with consolidating themselves as one man in the execution of this conspiracy, all moving by a common mind to the employment of a common purpose for the common benefit, and one in iniquity, though they may be seven in person, they are to have twenty-eight challenges. Seven of them to have twenty-eight challenges on an indictment for a conspiracy, whereas in an indictment for treason or murder, the defendant is to have but one!

What other anomaly have we? Suppose there are twenty men indicted for high treason jointly, in the United States circuit court for the district of Virginia, or Maryland, and there the statute we are discussing as belonging to the District not being applicable, to how many challenges are those twenty men entitled? Under the act of 1872 those twenty standing indicted for the highest crime before man and God are entitled together to only twenty challenges, one apiece. And yet seven men indicted in this District——

The COURT. [Interposing.] Does the statute read that way?

Mr. CARPENTER. They would have four hundred, your honor; that is all.

Mr. MERRICK. I mean twenty apiece.

And in all cases where there are several defendants or several plaintiffs the parties on each side shall be deemed a single party for the purposes of all challenges under this section.

It does not make any difference. It says as to treason:

When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to five peremptory challenges.

And if you indict more than one, says the law, they shall all be treated as one *quoad* the challenges. Indict your twenty men for treason jointly in an indictment, try them together, and they are treated as one man under this law, and all of them together are entitled to only the twenty challenges given by the law. Your honor sees, then, what an anomalous condition of things would be produced by such a con-

struction, and your honor appreciates what injustice would be done to the parties by such an application of the statute.

Now, I submit that under the case of *Page vs. Burnstine* your honor's decision in the circuit court is sustained by the Supreme Court of the United States, and the court in general term, when that question comes up again, must decide as your honor originally decided.

I say in the second place that this act, not being inconsistent in any of its provisions with the act locally applicable to the District, is to be construed in connection with it, and all rights given by the two are to be preserved to the respective parties.

The COURT. But the difference between the three peremptory challenges in the general statute and the four allowed in the District statute is a matter of considerable difficulty in the way of your construction. The general rule is that statutes relating to the matter, if there are two, one general and the other special, the general must give way to the special statutes. Now, here is a general statute relating to the whole of the United States, and a special statute, the application of which to the District of Columbia cannot be disputed, and there seems to be an inconsistency in the two systems. Well, the rule undoubtedly is that where there is a special provision, or a particular locality, or a particular class of persons, and that special provision is inconsistent with the general provision, another law, the special provision takes precedence of the general provision.

Mr. MERRICK. I do not see fully the difficulty that your honor suggests, for the reason that where there are two statutes, if they are apparently inconsistent in some particular, and by their union the benefits intended to be conferred by each can be given, then they may be construed together.

The COURT. Now, under the general statute here the defendants in this case would be entitled to three peremptory challenges, and to no more. The whole of them are entitled to three. Under our special statute, treating them as one person, they are entitled to four.

Mr. MERRICK. Yes, sir; that is true.

The COURT. Now, in that particular, which statute is to take precedence.

Mr. MERRICK. Unless the general statute is to prevail because by operation of the reason that I have stated when I was first addressing the court, and I do not repeat, which reason was this, that the general statute was passed subsequent to the other—unless by reason of its subsequent date, going back behind the codification or the revision, then they both stand together, and wherever the act in the general system of laws may conflict with the act giving rights under the local statute, you may give the rights given by the local statute, and where the local statute has not made provision you follow the general statute.

The COURT. That is, it is not intended by the legislature to be a complete provision on the subject.

Mr. MERRICK. Yes; that is what I mean.

The COURT. Now if this statute, relating to the District of Columbia, is a complete act, covering all the ground Congress intended for this District, there is no room to bring in the general statute; there is no place for it.

Mr. MERRICK. Let me put a hypothetical case to the court. Suppose the statute for the District in the first place stands, and the right for challenging under the general statute is similar to that in the District; and suppose a general law is passed by Congress to this effect, ~~that~~, in exercising the right of challenge given by law, the defendants, ~~they~~ are several, shall be regarded as one. Suppose it to stand alone.

The COURT. In all courts of the United States ?

Mr. MERRICK. In all courts of the United States. Very well. Now, your honor, is there any doubt but what you would have to apply that law ?

The COURT. None at all in such a case as that.

Mr. MERRICK. Now, how far are we removed by the act of 1872 from such a case as that ? Does not this act of 1872 so provide ? Does it not make other provisions, and is not every provision in the law applicable to the District of Columbia, except the number of challenges ? Suppose there was a general law of the United States saying that in all criminal cases the Government of the United States should have three peremptory challenges ; would your honor deny me the right of three peremptory challenges ?

The COURT. I would, if on the same date there was passed a law applying to the District which denied them to you.

Mr. MERRICK. Ah ! But the law does not deny them to me. Suppose that on the same date there was a law passed saying that the defendant should have three peremptory challenges in the District of Columbia, and on that same day there was a general law passed saying that the Government, in all criminal cases in the courts of the United States, should have three ; would they not both stand together ? Would they not both be in harmony ?

The COURT. They might possibly, if there was nothing else in the general law in conflict with it.

Mr. MERRICK. Now I will read to your honor a paragraph in the case of *Page vs. Burnstine*. I read from 102 United States, at page 664. Your honor will excuse the earnestness with which I press this point.

The COURT. Oh, it is a very important point in the case.

Mr. MERRICK. There are reasons for it that are of a very serious character.

The preliminary question for our consideration is whether Burnstine, on his own motion, can testify as a witness in the cause.

This was decided in 1880.

The contention of the appellant is, that no party to an action, by or against a personal representative, can testify against his adversary as to any transaction with, or statement by, the deceased, unless called to testify thereto by the opposite party, or required to testify thereto by the court (Revised Statutes, section 858). This rule, it is claimed, applies to the courts of the District of Columbia as fully as to the circuit and district courts of the United States.

Now, will you find me section 858, Mr. Corkhill, and read it for me, please ?

The contention of the appellee is, that his competency is to be determined by sections 876 and 877 of the revised statutes relating to the District of Columbia.

The COURT. Mr. Merrick, I remember very distinctly that case.

Mr. MERRICK. Now, I want to show your honor that this section, 876, was a complete provision.

On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any court of justice in the District, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence within the District, the parties thereto, and the persons in whose behalf any such action or proceeding may be brought or defended, and all persons interested in the same, shall, except as provided in the following section, be competent and compellable to give evidence, either *viva voce* or by deposition, according to the practice of the court, on behalf of any of the parties to the action or other proceedings.

Now section 877 :

Nothing in the preceding section shall render any person who is charged with an offense in any criminal proceeding competent or compellable to give evidence for or against himself ;

Or render any person compellable to answer any question tending to criminate himself ;

Or render a husband competent or compellable to give evidence for or against his wife, or a wife competent or compellable to give evidence for or against her husband, in any criminal proceeding, or in any proceeding instituted in consequence of adultery ;

Nor shall a husband be compellable to disclose any communication made to him by his wife during the marriage, nor shall a wife be compellable to disclose any communication made to her by her husband during the marriage.

Now, those are all the limitations imposed by the act referring to the District of Columbia in terms, for it says that the proceeding before any court of justice in the District shall be governed according to this act. Then followed the act which Mr. Corkhill will read, in the general Revised Statutes, section 858.

The DISTRICT ATTORNEY. [Reading:]

In the courts of the United States no witness shall be excluded in any action on account of color, or in any civil action because he is a party to or interested in the issue tried : *Provided*, That in actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other, as to any transaction with, or statement by, the testator, intestate, or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court. In all other respects, the laws of the State in which the court is held shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law, and in equity and admiralty.

Mr. MERRICK. [Resuming.] Now, then, your honor, it is to be observed that in the District, parties in interest and parties to the suit were compellable to testify except in certain specified cases. Among those specified cases was not the case of an executor or an administrator in reference to the transactions with the deceased. In a general statute of the United States applicable to the country at large, making provision for this subject for the country at large, passed on the same date with the statute for the District, there was a limitation further upon the power of the party to testify, to wit, a limitation upon his right to testify in cases where he was a party, as executor, and had had conversations or transactions with the deceased. A right was given by the statutes applicable to the District of Columbia in great fullness and amplitude of donation, and that right on the same day in a general statute applicable to the United States was limited by a provision not in the District statute, and the question was whether the party was to exercise the right, or the opposing party to exercise the power given by the District statute, regardless of the limitation contained in the general statute, and the Supreme Court of the United States said that that part of the general statute which was a limitation upon the power given in the local statute, although it made no reference to the local statute, applied to limit the general right and large power given by that local statute.

Now, what have we here ? A general statute applicable to the District of Columbia, by which a power and a right of challenge is given. On the same day a statute is passed applicable to the whole United States, in which the general right and general power referred to in the District statute is limited in the circuit courts of the United States. Where is the difference between the two cases ? In the one case in reference to a right to testify there was only a specified limitation as to the District, and the same day that those specified limitations were passed in the general statute another limitation is added. In this case now

before the court a general right of challenge is given to be exercised as the party pleases by the statute applicable to the District of Columbia, and on the same day a general act applicable to the country at large is passed limiting the exercise of the general power of challenges, and the two acts harmonize greatly more than the two acts referred to in *Page vs. Burnstine*; for these two acts can clearly and manifestly be executed together, taking the statute of the District of Columbia and applying it in full and without limitation in so far as it is concerned to limit the manner of the right, the exercise of the right, by the subsequent statute. The right of challenge is given by the statute applicable to the District. The limitation upon the exercise is prescribed by the right applicable to the country at large. So your honor has the answer to the question you propounded. I reconcile the right of four challenges in the District, and three challenges outside of the District. They are reconciled by taking the statute of the District in its entirety as it stands and administering it, but administering it subject to a limitation in the general law applicable to the whole and the entire country, for under the statute of the District the Government has no challenge. Is the Government to be left without challenge in the District, when a right is given all over the rest of the United States? Could that have been anticipated? Could that have been supposed?

The reasons assigned by my brother Totten for that construction are reasons directly against it, may it please your honor: That the Government is here, and is capable of oppressing, and ought not, therefore, to have the right. The right was given, not to prevent oppression, not to prevent wrong, or to enable oppression, or to enable wrong, but the right was given to secure a fair jury and a fair trial, and if there is any spot on the face of the earth, within the limits of the United States, where the Government itself needs protection, it is here where combinations gather around her Treasury, and multitudes are consolidated in one to steal her finances. It is here that she needs protection. Here gather, from every section of the country, evil-disposed men, who feel that the Government is legitimate subject for pillage. Here gather men to form their schemes, or, if they form them elsewhere, here they gather to execute them, and the Government is least protected under the very shadow of the Capitol. Infinitely better does she stand before the free people of this country, where the right of suffrage prevails, and where men feel the necessity of guarding the coined sweat of their brows poured into the Federal Treasury for taxation. They guard it better, they appreciate it more highly than they do here, and these schemes culminating here, and this being the place of their execution, if not their formation, their ramifications extend through these honest and high-toned people to such an extent that the Government is never safe unless she is left free to pick out those who may possibly have sympathies with the various rings and combinations that infest the Capital.

Mr. MCSWEENY. If the court please, this is our motion. If you will bear me a moment——

The COURT. [Interposing.] I do not know how many arguments there are going to be.

Mr. MERRICK. I thought I had the close.

Mr. MCSWEENY. We thought it was our motion.

Mr. MERRICK. However, so far as we are concerned, we accord to our brothers the close, with the permission of the court.

The COURT. There must be some *kind of limitation* to this argument.

Mr. MCSWEENY. I will promise to be brief in the consideration of the subject.

The COURT. Yes, it may provoke a long argument, unless you are entitled to the conclusion.

Mr. TOTTEN. It is our motion.

The COURT. What was your motion?

Mr. TOTTEN. That we be allowed four peremptory challenges each.

Mr. MCSWEENY. I supposed the importance of the question would arise above the limit of time, and my brother on the other side said that the question of acquittal or conviction would depend upon the settlement of this question.

Mr. MERRICK. I said it might have been.

Mr. MCSWEENY. I thought you said it would. Whether it could or should it is in the same tense, and it is the same grammar.

The COURT. I will hear you briefly.

Mr. MCSWEENY. I will be brief. It seems to me the matter is all in a nut shell, and that a very small nut and a very small shell will hold it all. There are two statutes, as they appear to a person taking a casual view of it which determine this question. The first is section 819. I will read it for my own benefit and not to enlighten the court:

When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to five peremptory challenges. On the trial of any other felony the defendant shall be entitled to ten and the United States to three peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs the parties on each side shall be deemed a single party for the purposes of all challenges under this section.

Suppose this section had stopped right here:

Each party shall be entitled to three peremptory challenges.

And this other restrictive clause had not been there, our friends would not have attempted to deprive us each of the three challenges herein named. Let us start on that proposition. It required this restrictive clause. I make a point that if it was not for the following:

In all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges.

Each one of the defendants here would be entitled to three. Eight threes make twenty-four. But that restricting clause on which the brethren on the other side are going would limit us they say. I pass now the question whether it be civil and criminal cases that are included under the head of plaintiffs and defendants. I say I assume for the purposes of the argument that without the restricting clause reaches us we are under this statute. Now the question is are we under this statute? I am told that they were both passed on the same day; that this statute was passed concerning your District as if it were concerning my district where I live or my county. It is just as if they had said "The jurors in your county and the proceedings at your place." So notwithstanding this general law you are governed by the following words:

On the trial of any person charged with a crime, the punishment whereof may be confinement in the penitentiary or District jail, the defendant shall be entitled to four peremptory challenges of jurors.

Need I remind the court here that if we are convicted under section 5140 we may be sentenced to penitentiary or jail.

The COURT. There is no doubt about that.

Mr. MCSWEENY. The only doubt would be solved by the choice that

the court would make. So that we are within the terms of the statute if we are convicted.

On the trial of any person charged with a crime, the punishment whereof may be confinement in the penitentiary or District jail, the defendant shall be entitled to four peremptory challenges of jurors.

Now, unless they will carve out this statute, transfer it on some legal trucks and land it over in section 819, give us the benefit of the four challenges which are not in 819. Then when you get it over there we get our four challenges by this statute, and you get your restriction by that statute which only gives three, and we have an anomaly that would transcend in curiosity even the indictment which is drawn to which we answer. Take your four challenges from this statute, carry it over and insert it in the statute which only gives us three, and then a piece of this and a piece of that, and the four we get by this and the restriction we get by that.

Under which king, Bezonian, speak or die?

Under which statute? They say they are liberal; they will give us a piece of each. That is a curious proposition for a day in June. A piece of each! That is a singular combination. Where is its life? Where is its ligament? Where is its legal umbilical cord to hitch it to the other? You just transfer it and let it wander along around the other. Take the four out. There is no four here; only three over in this statute. "Well, we will give you four." They are exceedingly pleasant. They will give us four for the purpose of getting a clamp on us in the three act that is not to be found in the other.

Now, can that be done? Supposing this act gave us twenty in this District: what would you say then? Suppose this District act instead of giving us four gave us twenty; what would you do then about it? Would not the act either stand upon its own merits as applicable to the District, or be no act at all? The gentleman talks about instances where there are two kinds of statutes, general and special, and he talks, as is true, about the difficulties that are frequently raised in courts as to whether the general act or the special act shall prevail. But it has been decided in the States like my own that in these matters where there is a general statute on the subject, and contemporaneous with, or subsequent to it, a special act is passed; that is itself a legislative declaration; it is not a judicial question. The legislature by that very enactment decided that the general act is not applicable to the local jurisdiction and to the local view of the question. Where there is a general act that may be applicable, and a special act is passed by the same body at the same day or time, the Supreme Court have held that that special act is a legislative declaration that excludes the operation of the general statute. This will be found in our Ohio reports and leaves no question for judicial determination at all. The legislature has determined that the special act shall override the general act, and that the special act shall hold without any intervention of the general act. That is the case that is applicable here. I am told that these acts were passed upon the same day. There is no difficulty at all in their application.

There is another peculiarity about this. Supposing you stick to section 819, my friends, what will you say to this other clause:

On the trial of any other felony, besides treason, or a capital offense—

For treason is mentioned *per se*, even if it would be capital, or not—the defendant shall be entitled to ten and the United States to three.

One of the questions, as I have read our books, is, whether there are not doubts in our being proceeded against under and upon this statute, whether it might not be *quasi* within the discretion of the court made a felony. If you would imprison us within the penitentiary of any of the States, there are authorities looking for the idea of calling that a felony. In one of the decisions by one of the learned judges that we quoted here the other day—I think it was the revenue case, or the distiller case—the judge started out and said:

This may be looked upon as either a misdemeanor or a felony, it being in the power of the court to determine whether it be felony, or not, by the imprisonment in the penitentiary.

I am not at all approaching that other vexed question, whether it be felony or not, or is by the common law infamous. I am not on that subject, because there are matters by the common law prohibited that are punished through statutes, such as larceny, &c., that are infamous *per se*, wholly independent of the punishment. There are other matters of that kind that I will not go into; but it has been generally conceded, as I understand it, that the capability of inflicting punishment by confinement in the penitentiary would make it a felony.

Now, then, the gentlemen might be under another trouble here: By this section we may demand ten challenges. What is the language:

On the trial of any other felony the defendant shall be entitled to ten challenges.

I guess you had better let this statute go to the place for which it was intended, and come back and adhere to that which we have before us. The gentleman complained of the hardship of this statute. These hardships have another side to them. Way back in the early days of English law the crown who selected the jurors could indiscriminately, and without giving the reason, challenge *ad infinitum* on a state trial, or where the king was a party until it had secured what the crown officers deemed a proper jury.

The COURT. Is that so?

Mr. MCSWEENY. Yes; it was a terrible state of things:

By the ancient common law—

Says Bishop on Criminal Procedure—

the king might challenge peremptorily as many as he thought fit, of any jury returned to try any cause in which he was a party.

Now, under Edward, this was changed and limited somewhat. Then it was stated that he would have to give reasons.

In construing this statute, however, the courts leaned to the side of the crown, and rendered the statute almost nugatory by their construction. For, says Hawkins, if the king challenge a juror before a panel is perused, it is agreed that he need not show any cause for his challenge till the whole panel be gone through, and it appears that there will not be a full jury without the person so challenged. And if the defendant in order to oblige the king to show cause, presently challenged *touts paravails*, yet it hath been adjudged that the defendant shall be first put to show all his causes of challenge, before the king need show any. * * * The right of the prisoner to challenge peremptorily is stated by Chitty, as follows: "The number, which in all cases of felony the prisoner was allowed by the common law thus peremptorily to challenge, amount to thirty-five."

The prisoner was given in these ancient days, when they got a little more liberal, a challenge of thirty-five.

This number has, however, been altered by several legislative provisions. Thus, by the 22 Hen. 8, c. 14, made perpetual by the 32 Hen. 8, c. 3, no person arraigned for petit treason, high treason, murder, or felony, shall be permitted peremptorily to challenge more than twenty of the jurors. * * * In the United States the number of peremptory challenges allowable to the defendant is variously regulated by statutes.

No processes of reasoning enable a party to determine anything on the statutes. They are absolutely statutory provisions. There is no use in discussing whether four challenges is enough, or too many, or too few. Your honor has well said that we can get no light if we discuss that matter until the sun shall go down in this long day in June. The simple question is, what is written? What is written, is written, and the question is, how is it written, and how is it to be understood.

The COURT. You stand upon the District statute.

Mr. MCSWEENEY. Yes, sir; which has no exclusive clause.

The COURT. That gives you four challenges for each defendant plainly.

Mr. MCSWEENEY. Yes, sir; plainly.

The COURT. Where is there anything in the District statute to exclude the right of challenge by the Government?

Mr. MCSWEENEY. The law in not giving it to them would by its silence be exclusive. I have not considered that.

The COURT. If the law in force in the District allowed the Government any number of challenges and the act of 1874, as I shall call this act, limited the right of peremptory challenges to four and said nothing to take away the Government's right to challenge, does not the Government's right of challenge remain?

Mr. MCSWEENEY. "Sufficient to the day is the evil thereof." They have got, I believe, some very eminent counsel employed to see to their challenges. I am for our side. I want to see how we shall manage on our side. I have an abundance of confidence that our friends upon the other side will look out for their challenges. But we stand by the multiplication table. Eight times four are thirty-two, sure, even in this District. There is no exception.

Now, there is much reason why it should be so. The Government selects these jurors and selects them properly I am sure. I make no imputation against the Government at all. They are ordained and properly running as I understand it. They have the selection of these jurors. Now, there are eight men put upon trial. Well, we asked for a separate trial for each of the defendants. It was proper for us to demand it and we have excellent reasons why we think it should be given. Your honor kindly remarked that if it were not for the length of this case and for the exceeding cost and a variety of considerations of that kind, you would freely give us a separate trial.

The COURT. I said I would be inclined to gratify you.

Mr. MCSWEENEY. Certainly. I want to state the matter generally. I am using this by way of illustration. If Mr. Dorsey had had the benefit of your discretion and been given a separate trial, he would have had four challenges. Every other man that would have come to trial would have had four challenges also. Eight times four are thirty-two challenges which we would have been entitled to under the constitutional right, if you had consented to grant us separate trials.

Now, all men are presumed to be innocent until they are proven guilty. I suppose that is not a startling or new proposition in this District. Although we are charged with conspiracy, will you please in all these considerations give us the benefit of the presumption that we are innocent until we are proven guilty. Yet we are massed together and fired at in a lump. We are called ugly names. The gentlemen should leave that to the indictment, and out of the indictment should not call us any hard names. They say "You band of conspirators! You set of rogues! You gather around here; where the treasure is there are the wolves; there are the jackals, and there are the thieves!" And this argument is addressed to your honor to assist you and

guide you in the cold reading of a few lines of statute. I say we are massed together it is true; but do not the reasons apply that apply to a single individual for our challenge? Now here are eight men who have a right to challenge for favor and peremptorily. "Favor" is the old word. The old idea was "He is not in my favor. He does not favor me." There is challenge to the favor by peremptory mandate of the objecting party without excuse. The king challenged in that way until he could get some one who should be in his favor, as he thought.

Now, let me give you an illustration: Suppose my brother Ingersoll and myself are indicted for conspiracy and are to be tried together. There comes a man on the jury who has been my friend from childhood and whom I know well. I want to be tried by such a man. Says my brother Ingersoll, "I must challenge him. I do not want to be tried by him." I say, "Why not?" Says he, "That man is my enemy. He has pursued me from Dan to Beersheba. He has followed me in all the pathway of my life." I say "Yes; but we are joined." Yes; but who made us join? Can the criminal pleader on a sheet of paper make us join? My wife, my children, my family, my body—am I to go branded as a felon and covered with stripes? I say, "That man suits me, and you have got to stand it." I return now to my calculation. Eight will go into four half a time. So each of us has a chance at half of a carcass of a jury in the box. Who is to settle it? You are called upon, and you go on and challenge John, Jim, Jake, and Joe. I say, "Hold on." You say, "No, sir; I have picked out the four I do not want, and the balance are my men; I am through." I say, "I don't want those others. You didn't give me a chance. You never 'said turkey' once. Why didn't you give me a chance." You say, "I have used my four up. I got in first."

The importance of this right of challenge was never more apparent, for on a question like this, where eight men are charged with conspiracy, there may be internecine war, there may be intersea struggles. We have a right to presume everything in favor of our claim. There may be antagonisms. This is manifest to you already by the preliminary motions. They have demanded separate trials. We did not want to bother your honor by each defendant putting in a separate motion, and so we put in one and got your honor's ruling upon it. We did not make motions with any intention of being pestilent. But supposing when we are all being tried together one poor fellow was brought in without counsel, or anything else, and stood mute, and all the other sharp fellows around him used up his four challenges. He would say, "Where am I; what shall I do?" He would turn to brother Ingersoll and say, "Robert, what shall I do to be saved?" [Great laughter.]

The reasons are infinite. They can be urged with all manner of good reason and justice why the latitude that we ask should be given. One word and I will leave the subject. My friend Mr. Merrick has said (and although not a short-hand reporter, I am a long-hand reporter) that on the decision of this question may depend this verdict. That is a terrible statement. It sounds like a fire-bell in the night. It alarms me, and makes me stand still closer to the horns of the altar, and grasp them, and again urge that we have every right here insisted upon. Under these circumstances let not the court rebuke us for indulging in eagle flights. The ornithological performance has commenced upon the other side. They have opened up the Government aviary and let out all the birds this morning. They say, "Around here gather the thieves." That means that we, the conspiring parties here charged, are the afore-said thieves referred to. Now, that is unkind.

Mr. MERRICK. I did not say that.

Mr. MCSWEENEY. Oh, no. "Innuendo," as we say in slander counts, "meaning thereby," &c. Now, why should the determination of this question be in the manner indicated by the gentleman? If it be, so much the more importance for us. If we get five challenges they are gone; if we get six they are "goner" yet, and if we get seven they are "gonest." But if we only have four they are there like a thief in a mill. Is that not a curious state of things?

My friends say the determination of this question may determine the fate of these defendants. Well, if it has a controlling influence in determining their fate, and the law gives it, then let the judge so award it. So much the more importance for it. I thank him for teaching me that word. I preach from that text. On it may depend the decision of this case and the liberty of eight citizens.

"I thank thee, Jew"—

The old quotation is, but I will say :

"I thank thee, Christian, for teaching me that word."

I will amend the quotation. I thank them for the suggestion that they regard it as so important; not merely as to the interpretation of the statute; but they say that on the result may depend the fate, fortune, and destiny of eight men of this country at this bar. Let us be careful where we tread. We are on holy ground. For upon this question, at this preliminary stage we are dealing with the great question of the liberty of the citizens.

Mr. MERRICK. If your honor please, if it will not be considered a trespass—

The COURT. [Interposing.] That is what I was apprehensive of.

Mr. MERRICK. [Continuing.] I want to say only a word. I take it for granted that your honor would like to have what light can be thrown on the question. I shall spend no time except in briefly stating one or two propositions of law, further than to say that my reference to the verdict of guilty or not guilty resulting from the decision of this question did not refer to the exercise of their powers of challenge. I referred to the Government's power of challenge, and said that whether there was a verdict or not might depend upon the Government's having the right of challenge.

The COURT. I understood you in that sense.

Mr. MERRICK. I am not going into any explanation now. I want simply not to argue any question at all, but to call your honor's attention to the statute. The learned gentleman has said that they have thirty-odd challenges.

The COURT. If they count the man that is said to be dead they have.

Mr. MERRICK. I suppose they count him in that case, although not in the others.

Mr. TOTTEN. The Government denies that the man is dead; so we will challenge for him.

The COURT. He has not come into court.

Mr. INGERSOLL. No; we will give his challenges to the Government.

Mr. MERRICK. Could it have been the intention of the act of Congress that the defendants should have a greater number of challenges than the number of jurors? By this statute, twenty-three constitute the grand jury, and twenty-six the petit jury. Could it have been intended that they should have a greater number of challenges than there were jurors? In capital cases there are provisions for an increase of the jury.

The COURT. So there are in misdemeanors.

Mr. MERRICK. So there are in misdemeanors. Could it have been intended, I submit, that they should have more challenges in any case than the number of jurors?

The COURT. I think there would be no embarrassment about that.

Mr. MERRICK. Very well. Then another question: How many challenges is a party entitled to in this court who is indicted for a charge which is a felony? Is he not entitled to ten?

The COURT. We have so construed the law heretofore.

Mr. MERRICK. Then, if he is entitled to ten he gets it from the act of 1872. You have already brought in the act of 1872, and administered it here. By the act before referred to it is provided that on the trial of any person charged with a crime, the punishment whereof may be confinement in the penitentiary or District jail, the defendant shall be entitled to four peremptory challenges of jurors. There is no provision for a felony in the District statutes. It is the act of 1874 that they have been acting under.

One word further: How would this law have stood, or these laws have stood, relatively to each other, if in 1874 there had been no revision of the statutes? In 1867 the statute now incorporated in the revised statutes of the District of Columbia was passed, and in 1872 the other statute incorporated in the general statutes was passed. All laws not inapplicable to the District of Columbia among the general laws of the United States were to prevail here as authority. Prior, then, to 1874 the act of 1872 unquestionably modified the act of 1867. That being the case, what does the Supreme Court say upon the subject. They affirm the proposition I have just stated. In the first place they say, in 12th Otto, on page 668, the case of *Page vs. Burnstine*:

Such being the law when the Revised Statutes of the United States went into operation.

Referring back, however, to what they meant in that sentence, I will read this:

There is still another act which has an important bearing upon the question before us. We allude to that portion of section 34 of the act of February 21, 1871, creating a government for the District of Columbia, which declares that "the Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within the said District of Columbia as elsewhere within the United States."

Now, that is a law passed for the District of Columbia and introducing in a body into the District all the general statutes of the United States that are not inapplicable according to their terms. Then the Supreme Court says:

Such being the law when the Revised Statutes of the United States and the revised statutes relating to the District of Columbia went into operation (which was on the same day), we are to inquire whether Congress, by those revisions, made or intended to make any change in the particular rule of evidence now under examination. We are of opinion that no alteration of the previous law was made or intended to be made. The special act of July 2, 1864, relating to the law of evidence in this District is reproduced *ipsisssimis verbis*.

He then goes on with the other law, and continues:

If we consulted alone sections 876 and 877 of the revised statutes relating to the District, we should, perhaps, be constrained to hold that in the courts of the District parties could, upon their own motion, testify as well in actions by or against personal representatives as in any other action. But we cannot overlook the fact that in the revisions the language of the previous statutes have undergone no change whatever.

No change whatever.

We should not, therefore, permit the mere collocation or rearrangement of the pre-

rious statutes in the new revisions, adopted on the same day, to operate to change the law, and thereby defeat the will of Congress.

What does that mean? That in the revision one statute is put in the District revision and another general statute is put in the general revision. To determine the operative effect of those two statutes we must look at their relation to each other in point of time as to the period when they became laws. The revision was not intended to change them. And as the act in reference to the District had been passed prior to the general act which added another exception to the right to testify, the other exception added to the District statute as to the right to testify became a limitation upon the general character of the District statute under the law of 1871, which said that all statutes not locally inapplicable should be laws of this District; and going behind 1874, the period of revision, they say we find this condition of things: A local law passed in 1867, say, and a general law passed in 1872. Which is to operate, and how they are to be applied, must be determined by their relations and force prior to the date when they were incorporated in the revision. This case fully sustains the proposition I have laid down to you; and having been permitted to read it to your honor, I will not trespass further than to say that you have, with a just appreciation of this law before you, already introduced the act of 1872 into the District by permitting a man charged with felony to exercise the right of ten challenges.

I find it here by judicial authority; and finding it here by judicial authority I vindicate its presence by the decision of the Supreme Court of the United States and ask its application to the case now pending.

The COURT. I think Colonel Ingersoll referred to the act of 1865, which amended the number of challenges to which the Government might be entitled.

Mr. INGERSOLL. That was all over the country, I believe—the general act. The act of March 3, 1865, found in 13th Statutes, 500, gave the defendant ten and the United States two peremptory challenges on the trial of any other offense than treason or a capital offense. That was passed in 1865, and was a general law. Then came this law applicable to the District, as I understand it, in 1867, which gave to the defendant, say, four and to the Government apparently none. Then afterwards came the act of 1872; then the revision of 1874, and, I think, in the revision of 1874——

The COURT. [Interposing.] Your act of 1865 is what?

Mr. INGERSOLL. Thirteenth Statutes, page 500.

Mr. TOTTEN. Your honor had better have the 14th Statutes also, because in 14th Statutes the act was amended by making it three instead of two.

The COURT. What is the date of the act in 14th Statutes?

Mr. TOTTEN. The date of that act is June 8, 1872; 17th Statutes, not 14th. That is the act about which we have been talking. The act of June 8, 1872, amended the act of March 3, 1865.

The COURT. What is the page of 17th Statutes?

Mr. TOTTEN. Two hundred and eighty-two.

The COURT. What is the date of your act in 17th Statutes?

Mr. TOTTEN. June 8, 1872.

The COURT. That increased the number to three.

Mr. TOTTEN. Yes, sir.

The COURT. The act of March 3, 1865, relates to criminal procedure before the district and circuit courts of the United States. The second

section of that act provides for the number of challenges, and it is in these words :

When the offense charged be treason or a capital offense, the defendant shall be entitled to twenty and the United States to five peremptory challenges. On a trial for any other offense in which the right of peremptory challenge now exists, the defendant shall be entitled to ten and the United States to two peremptory challenges.

That continued, it seems, to be the law until it was changed by the act of June 8, 1872.

Mr. MERRICK. The District act intervened.

The COURT. The act of 1867?

Mr. MERRICK. Yes, sir; the act of 1867 intervened.

The COURT. Well, it was re-enacted in the District laws. That continued to be the law until the passage of the act of June 8, 1872.

Mr. MERRICK. Except as modified by the act of 1867.

The COURT. The act of 1867 increased the number of peremptory challenges to the United States.

Mr. INGERSOLL. The act of 1867 applies to the District.

Mr. MERRICK. It gave the defendant four challenges and the United States apparently none.

The COURT. I am tracing it another way.

Mr. MERRICK. Excuse me. I beg pardon. I thought I was simply supplying an omission.

The COURT. I want to find the act of 1867 which changed the act of 1865.

Mr. MERRICK. You will find the act of 1867 in the District statutes.

Mr. TOTTEN. No; you will find that in the 14th Statutes at Large, if you want the original.

The COURT. I will find it in the District statutes.

Mr. TOTTEN. Section 838.

The COURT. I will take it from the District statutes here. The act of 1865, which gave the United States two challenges in cases like this was changed by the act of the 22d of February, 1867. [Correcting himself.] No, that is not it. I cannot lay my hands upon the act which changed the two challenges to three.

Mr. TOTTEN. That is the act of June, 1872, your honor, in the 17th Statutes, page 282. The act of 1867 related solely to the District of Columbia.

The COURT. The act of June 8th, 1872, provided that—

“Section 2 of the act entitled ‘An act regulating proceedings in criminal cases, and for other purposes—’ ”

That is the act to which I referred—

“be and the same is hereby amended to read as follows.”

And so on. And in section 2 it declares :

And in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purpose of all challenges under this section.

There is one sentence that I ought to have read before :

On the trial of any other felony—

That is, other felony than treason or other capital offense—

the defendant shall be entitled to ten and the United States to three peremptory challenges.

This act is entitled an act to amend the other. So that the act of 1865, as amended by the act of the 8th of June, 1872, gave the United States three peremptory challenges. When the act in regard to the

District of Columbia was passed there was nothing said about any challenges in favor of the United States. Under the provisions of these two acts, I am of opinion that the United States had the right of peremptory challenge of three in a case of this kind. Now this act, which is section 838 of the revised statutes of the District, is in these words.

On the trial of any person charged with a crime, the punishment whereof may be confinement in the penitentiary or District jail, the defendant shall be entitled to four peremptory challenges of jurors.

That act, so far as the defendant was concerned, changed the number of challenges to which he was entitled under the preceding acts from ten to four. But it did not, it seems to me, affect at all the challenges that belong to the United States. There is nothing in this provision to take away from the United States the right to challenge, as that right was conferred or limited by the act of the 8th of June, 1872.

Now the question is, whether the United States, under these two acts of 1865, and 1872, in this District, so far as this District is concerned, had the right of three challenges, according to the decision of the Supreme Court of the United States in *Page vs. Burnstine*, and according to the declaration contained in the act of Congress of the 21st of February, 1871, which was re-enacted in the revised statutes of the District, section 93, in these words :

The Constitution and all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the District as elsewhere within the United States.

Now, was this limitation of the right of challenge, giving to the Government three challenges, a statute which was inapplicable to the District of Columbia ? In my opinion it was not, and plainly, under the decision in *Page vs. Burnstine*, it was not. So that I am of opinion that the United States now, in this District in a case of this character, is entitled to the right of three peremptory challenges.

The next question is to how many are these defendants entitled ? There are seven or eight of them. By this section 838 of the revised statutes of the District of Columbia, it is declared :

On the trial of any person charged with a crime, the punishment whereof may be confinement in the penitentiary or District jail, the defendant shall be entitled to four peremptory challenges of jurors.

Under that provision I am clearly of opinion that each one of these defendants is entitled to four peremptory challenges, unless that right has been diminished by the provisions of the general law which are in these words—and it is only a transcript from the act of 8th of June, 1872, section 818:

When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to five peremptory challenges. On the trial of any other felony the defendant shall be entitled to ten and the United States to three peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purpose of challenges under this section.

Now they are to be deemed for all purposes of challenge under this section as one, and the challenges to which the defendants are entitled under this section in a case of this kind are three. If this jury were being impaneled under this section the defendants would be entitled to three challenges only. But we are not impaneling a jury under this section. We are impaneling a jury under a section which gives the defendant four challenges. So that I think, in comparing these

two sections with the other, I am obliged to say that we are not proceeding now, so far as the challenges of the defendants are concerned, under the right conferred by section 819, which gives only three challenges, but under section 838 of the revised statutes of the District of Columbia, which gives to each defendant four challenges. Now the consolidation of the parties as one, and with the right of but one challenge, or a consolidated right of challenge, can only apply where the parties in a case of this description of trial are entitled to three challenges.

Mr. WILSON. Will your honor allow me? I think it is due to the court that I should call the attention of the court to the last section in that District of Columbia revision. I do not propose discussing anything, but I think that your honor ought to look to that.

The COURT. What section is that?

Mr. WILSON. The very last section in the revised statute. Section 1296 of the District of Columbia acts. I think it is due to the court to call attention to it. You will find it at page 149.

The COURT. Do you want me to take back what I said? [After perusing the section.] I do not think that that section 1296 affects at all what I said. Now it is very true that the court in regard to the trial of felony in this jurisdiction has acted under this section 819 of the general law, and under that section has allowed the defendant ten peremptory challenges. But that is not at all inconsistent with any provision in the District act. Undoubtedly we have acted here under section 819 in many cases and allowed the defendant ten peremptory challenges. It is said now that we are bound by the construction heretofore given, and which incorporates this whole section into our law. Now, it is possible that the court in those cases may have been too lenient to the defendant. These two acts were passed upon the same day, and under one it appears that four challenges were given, and under the other ten. If there has been any error or misconstruction of the law, it has been, therefore, on the side of the defendants. But that is not an important matter here now. I think it is perfectly plain that we are trying to impanel a jury now under our own act, and that the right of consolidation does not exist; the restriction, rather, of the right of challenge provided by this general law is not applicable under this statute of ours. We will proceed, now, with the selection of the jury. The Government has three peremptory challenges, and the defendants are entitled to four each.

Mr. MERRICK. I understood, your honor, as indicated by the other side, that the mode of proceeding would be for the Government and the other side alternately to tender a juror as they were called.

Mr. TOTTEN. No, sir.

The COURT. That was not their proposition.

Mr. MERRICK. I understood that to be the proposition made by one of the counsel.

Mr. TOTTEN. The Government can make a selection first.

Mr. MERRICK. I say that we make a selection and tender the juror to them.

Mr. TOTTEN. I don't think that is the law.

The COURT. I think the Government does not tender a juror.

Mr. MERRICK. What I mean by that is, as I understood the proposition to be made by one of the counsel on the other side, and I supposed its application to be in this way: where a juror is called the Government is asked whether it will take him or not. If the Government takes him he is then tendered to the other side to see whether or

not they take him. If they take him he is sworn. The next time the defendants exercise their right of saying whether or not they will take him and tender him to us. That is what was stated by one of the counsel.

The COURT. You cannot carry on that operation, because you have but three peremptory challenges, and they have twenty-eight.

Mr. MERRICK. That I am aware of.

The COURT. You would run out very soon.

Mr. MERRICK. I would run out very soon, it is true.

Mr. INGERSOLL. This is what I stated. Of course I do not pretend to know the practice here, but, so far as I know, I have never known but two modes. One was to have four jurors called and then to have the Government accept the four or object and have another called, and go on in that way until the Government accepted four. Thereupon the defendant challenged one, and then another had to be called, and that process was kept up until the defendant tendered back some four.

Mr. MERRICK. Why four, your honor?

Mr. INGERSOLL. I was going to say I have never known but two methods, either by the four or twelve, the Government passing upon twelve jurors and tendering them to the other side. That is the only way I have ever seen it in any United States court. The twelve jurors were agreed upon by the Government and they tendered them to the defendants, and then if the defendants objected, good; if they did not they would accept the twelve.

The COURT. Have you any objection to that?

Mr. MERRICK. I did not hear it; I was talking to Mr. Corkhill. I understand the practice to be in this court, certainly as I have understood it, that where the right of challenge existed one juror was acted upon first, and then another. But as to who should consent first, that is another matter, which I do not know anything about, because when I tried the particular case that I tried here the Government had no challenge.

The DISTRICT ATTORNEY. The ordinary practice has been for the clerk to call a name, Mr. William Dickson, for instance. He stands up. The Government says he is acceptable or rejects him. The defense says, "We don't want him" or "we do," and in that way both are agreed to. Mr. Dickson, he is sworn, and you go along.

Mr. WILLIAMS. That has not been the practice here. Sometimes it is done in capital cases. But the course in felony or misdemeanor is to call the whole jury and then for the Government to say whether they are satisfied with the jury or not. If they are satisfied, then the defendants look over them and see whether they are satisfied.

Mr. MERRICK. That is all right, so far as that goes. Let me ask you a question for information. You call a jury. Either party says we are not satisfied with that jury. Then you will have to call them one by one.

Mr. WILLIAMS. The Government challenges. They have their challenges such as they choose.

Mr. MERRICK. Exhausting those on that panel.

Mr. WILLIAMS. Certainly.

The COURT. I will proceed upon what I think the proper course. You will call one juror at a time. Either party can object peremptorily and then we can pass along.

Mr. INGERSOLL. The Government must take or reject the juror before we pass along.

The COURT. And so must you.

Mr. MERRICK. We must alternate. As long as my challenges last I have a right to alternate. I act on the first juror and the other side acts on the second. When my challenges are exhausted I am still.

The COURT. I do not know any law which says that a jury belongs to the Government. The Government comes into court with a panel of jurors and tenders that panel to the other side. The machinery of a criminal court is provided by law, and the Government does not own it any more than the defendants. The court is at the disposition of the Government, but the jurors do not belong to the Government.

Mr. INGERSOLL. If the court please, I want this understood. That is all. I do not see as it will make any great difference.

The COURT. I do not think it does.

Mr. INGERSOLL. But the Government really occupies the position certainly of plaintiff. The Government is supposed to be prosecuting. Now, the Government has to say first whether a juror is satisfactory. If the Government accepts that juror, then the defendants can challenge him. If another juror is called in his place, then the defendant has to accept the juror called in his place some time and tender him to the Government. But in every instance the Government must act first.

The COURT. It does not make any practical difference. Proceed with the call of the jurors.

Mr. COLE. If your honor please, I have a decision here directly upon that point, in which the Chief Justice sat with Judge Bond, in the case of *The United States against Butler*, tried in South Carolina. The syllabus of the case is this :

In presenting jurors for challenge, the Government must first exercise its right and then the defense.

When the jury was being impaneled—

Mr. Youmans, for the defense, said that before the clerk proceeded to impanel the jury he would like to ask for information whether the peremptory challenges must be exhausted before any challenge for cause was made or *vice versa*, or whether it was a matter of indifference.

Judge Bond replied that counsel might do either one or the other, but as there were only three peremptory challenges, it would be very foolish to exhaust them before challenging them for cause.

After some further discussion it was decided that each juror should be subject first to the challenge of the Government, and afterwards of the defense.

The COURT. Very well. Call the jurors separately.

The clerk called William Dickson.

The COURT. Is there any challenge to Mr. Dickson by the Government?

Mr. MERRICK. What right have we to investigate beyond the investigation made by your honor?

The COURT. If you challenge for cause, as was intimated by Judge Bond, it would be very foolish for you to pretermitt that challenge. I suppose, of course, you would not.

Mr. MERRICK. How is that cause to be ascertained?

The COURT. We have inquired of them on their *voir dire*.

Mr. TOTTEN. That question of cause has been disposed of, your honor. I take it.

The COURT. I was just answering the question. I say the jurors have been inquired of so far. Probably by the time you get through with these twelve we will call some others who have not been on their *voir dire*.

Mr. MERRICK. Inquiry as to cause is exhausted, is it?

The COURT. Yes; as to qualification or disqualification. If there be

any juror who is subject to challenge on account of relationship or affinity, or anything of that kind, that is a good challenge for cause. You may make your challenge on that ground and the court will pass upon it. If you can make out a challenge to a juror upon any such ground as that, of course it will not be charged to you on account of your peremptory challenges.

Mr. MERRICK. Or if he has served on a jury within the time prescribed by law.

The COURT. Yes; if he is disqualified in that way you are not obliged to expend your peremptory challenges.

Mr. MERRICK. The point of my inquiry was whether I could ask any questions in addition to what your honor asked; whether I could ask a juror if he had served in the last two years.

The COURT. I do not see any objection to that.

Mr. MCSWEENEY. Does that apply to your regular or called jurors?

Mr. MERRICK. It applies to all.

The COURT. It applies to all. This will be a challenge affecting the qualifications of the juror; and if the juror is disqualified he ought to be excluded.

Mr. MCSWEENEY. My inquiry was to ascertain what your law is. Does this law, which was passed to reach professional jurors, apply to gentlemen regularly drawn from your box? In our State it simply reaches talesmen. They may be asked whether they have not been frequently put on. It does not apply with us to the regular persons returned by the trustees.

The COURT. Our practice has been to regard it as cause for challenge when a man's name has gotten into the box that ought not to have gotten into the box, for the reason that he was an alien, or disqualified for any other special reason. The fact that his name was in the box does not make him a qualified juror; and you may show that fact when the special juror is called.

Mr. MCSWEENEY. We have the same law in our State.

Mr. MERRICK. That has all been settled here.

The COURT. We will allow you to put any inquiry to ascertain whether any of these jurors is, in fact, disqualified on account of any sufficient cause.

Mr. MERRICK. Well, am I to proceed?

The COURT. Have you any objection to Mr. Dickson on any account?

Mr. MERRICK. No, sir.

The COURT. Swear Mr. Dickson.

The CLERK. The defense has not accepted him.

Mr. TOTTEN. We are not to proceed until they have finished with their three.

Mr. MERRICK. Not at all.

The COURT. We will have one at a time.

Mr. INGERSOLL. Have the Government accepted Mr. Dickson?

The COURT. Yes.

Mr. MCSWEENEY. There is one objection to this, and I will state it in a moment; if that juror is accepted, and sworn, he is a juror. The proposition now is to swear him.

The COURT. No; he will not be sworn until the jury is full.

Mr. MCSWEENEY. Oh, I misunderstood; I understood they were going to swear him in as a juror.

The COURT. No; we will fill the jury before they are sworn.

Mr. MCSWEENEY. Now I will illustrate this matter; we might be con-

tent to have on the jury A, B, C, D, E, F, G, and H; but I and J might come there and we might object to that combination. A and B and I and J might be enemies; and the new combination might become very objectionable. So I think the jury should not be sworn in separately.

The COURT. I tell you we are not going to do it.

Mr. MERRICK. I understood that we were going to pass finally upon each one as he is presented.

The COURT. But all will be sworn together.

Mr. MERRICK. But when a juror is passed upon, the question as to his being sworn is thereafter finally settled. The other side cannot then prevent it. That would be a manifest injustice. Each separate juror must be passed upon by both sides. He cannot be passed by. It would be a manifest injustice for me to exhaust my challenges without knowing who they are going to challenge, or what they are going to do. We must be very cautious. They have got 28 challenges, or 50, or 100; I do not know how many. We have but three. Now, I ask that each juror shall be decided upon when he is called. My brother calls my attention to a paragraph in the case of the United States *against* Butler:

The court held that this rule was in force when the Government had no right of peremptory challenge; but as a right of challenging jurors peremptorily has been given the prosecution, it should stand on the same footing with the defense, and either exercise the right of challenge at once, or not at all.

That is the case read from.

The DISTRICT ATTORNEY. When the juror stands up the Government says "Accepted" and the defense says "Accepted," and then he becomes a juror, and is sworn.

Mr. MERRICK. That was the practice in the cases that I have had here when there has been the right of challenge. We had no right of challenge at all in the most important case I ever tried here, which was Surratt's.

The COURT. It will be the same thing if he is accepted, and they are not permitted afterwards to challenge him.

Mr. MERRICK. That is the same thing.

The COURT. Have you accepted Mr. Dickson?

Mr. INGERSOLL. On the part of all the defendants we accept Mr. Dickson.

The COURT. I would like to know before we go any further when a challenge is made by the defense to which of them it is to be charged.

Mr. INGERSOLL. Of course.

The COURT. So that—

Mr. INGERSOLL. [Interposing.] We can keep books for these gentlemen.

Mr. MERRICK. You had better send down and get a large quantity of paper on which to record all their challenges.

Mr. INGERSOLL. We all accept this juror.

Mr. TOTTEN. Including Peck.

Mr. MERRICK. Mr. Totten speaks for Peck. Let that be noted.

WILLIAM T. WOOD was examined, as follows:

By Mr. MERRICK:

Question. What is your age?—Answer. Twenty-nine years.

Q. Have you been on a jury before during the last two years?—A. I have not.

Mr. HINE. Wait a moment. I object to the question. It is a question that cannot be asked a juror because it is a question with him whether he will serve. He can take that privilege under the statute; but the Government cannot object to him because he has been on a jury. Without argument I note an objection to the question.

The COURT. We will not spend any breath about an immaterial matter because he says he has not been on a jury for two years.

Q. Have you been on a jury within one year?—**A.** I haven't ever been.

Mr. BLISS. As bearing upon that subject I will read the statute:

And it shall be sufficient cause of challenge to any juror called to be sworn in any cause that he has been summoned and attended said court as a juror at any term of said court held within two years prior to the time of such challenge.

Mr. HINE. There is a special statute for the District of Columbia.

Mr. BLISS. This is a general statute.

The COURT. It is immaterial as the question does not arise here.

Mr. HINE. We have an act of the District.

Mr. BLISS. I know.

Mr. MERRICK. May I go further in the examination, your honor?

The COURT. In what respect?

Mr. MERRICK. As to his relation to the parties and his conversation upon the subject.

The COURT. You may.

Q. Have you conversed upon the subject of this case?

Mr. HINE. I object to the question.

The COURT. I overrule your objection.

Mr. HINE. Then I ask an exception.

A. In a casual way I have.

Q. Have you expressed any opinion when you were so conversing upon it?—**A.** I have not.

Q. With whom have you conversed upon it? Have you conversed with your father?—**A.** I have not.

Q. Has he never said anything at all to you in reference to it?—**A.** He has not.

Q. Never said a word?—**A.** He has not.

Q. You live at his house?—**A.** I do.

Q. Do you live together?—**A.** Not in the same house. I eat in the same house. I am in an entirely different business.

Q. You say he has never said anything to you at all upon the subject of this case?

The JUROR. Well, do you mean the proceedings in the court here?

Mr. MERRICK. I mean the star-route case generally.

A. I believe he criticised Judge Wiley's decision one evening at the table. That is the only thing I remember he mentioned.

Q. What else did he ever say to you upon the subject?

Mr. HINE. I object to that question.

The COURT. I overrule the objection.

Mr. HINE. I ask an exception.

A. Nothing else that I remember.

Q. You have never had any conversation with him except on that occasion?—**A.** That was not addressed to me. It was a general remark made at the table.

Q. Who was present at that time?—**A.** The family at the table.

Q. Did you not join in that conversation?—**A.** I did not. I talk very little on any subject. I have never conversed with him on that subject.

Q. Have you ever yourself opened a conversation with any one of the panel of jurors?—A. Probably I have. I have talked to the jury-men.

Q. Upon this subject?—A. Well, in a general way. I expressed an opinion day before yesterday that it would never be brought to trial, I believe.

Q. What other opinion have you expressed?—A. None at all. I have talked casually on the subject with different persons.

Q. You have opened these conversations yourself with your brother jurors, have you?—A. I couldn't say. It was a casual conversation. I couldn't answer that.

By the COURT :

Q. What do you mean by casual conversation?—A. General conversation ; talking with different ones.

By Mr. MERRICK :

Q. Talking with the different jurors?—A. Talking with two and three at times in the jury-room ; general talk. What I mean by " casual," is general talk.

Q. Have you talked of it since the case has been fixed for trial?—A. No, sir.

Q. When was the last conversation?—A. I think it was yesterday.

Mr. MERRICK. The case was fixed for trial some days ago.

Q. Where was it this conversation took place?—A. I think with Mr. Dickson, about protesting against the jury going to the hotel and occupying the same quarters—something to that effect—in the jury-room.

Q. When did you have any talk with them about the merits of the case?—A. I don't know when that was.

Q. You have had such talk?—A. No, I don't think I have at all, except as I told you, about locking the jury up in the same quarters.

Q. I don't speak of that. I speak of the general merits of the case.—A. I have no recollection of ever talking about that.

Q. Have you ever read to them any of the newspaper comments upon the subject?—A. I have not. I am positive.

Q. Have you never stopped any of them for the purpose of talking about the case?—A. I have not.

Q. When did you last have a conversation with any of them prior to the conversation about locking the jurors up?—A. I couldn't say. I don't suppose I said three or four words as to when it would be brought to trial, or if it would be brought to trial—in a general way ; general talk.

Q. Have you ever talked with any of the defendants?—A. Oh, no. I don't know any of the gentlemen. I don't remember to have ever seen one of them.

Mr. MERRICK. Have I the privilege, your honor, before exercising my right to challenge, to ask that this juror shall stand aside for the present? It is a privilege which is accorded in some of the circuits. It was decided in South Carolina I think the other day.

Mr. COLE. It was decided in the very case I gave you. The very passage I read was a decision against that position.

The COURT. It was where the Government had no right of challenge at all.

Mr. COLE. Yes. Then they might ask him to stand aside.

Mr. MERRICK. This question was decided by Judge Bond on the trial of the election cases the other day. He decided that the Government had the right to ask a juror to temporarily stand aside ; not to exercise

its right of peremptory challenge, but to decline for the present to pass upon him.

Mr. BLISS. The fact is that the case was elaborately argued there, and this case of *The United States against Butler*, in which Judge Bond had taken part, was discussed. I do not know on what basis, but in spite of what was there, the judge decided that the juror should stand aside. Mr. Ker was there and knows about it.

Mr. MERRICK. Mr. Ker is familiar with that case and will state it.

Mr. TOTTEN. We have the reported case here.

Mr. KER. I was in South Carolina at that time, and in a measure took part in the cases that were then on trial before his honor, Judge Bond. The matter was elaborately discussed, and the court decided that the United States had the right to stand aside; in other words, to challenge the juror without assigning the cause until the panel was exhausted; and after the panel was exhausted then they were called in the order in which they were first called and stood aside, and then the United States was bound to show its cause. This was decided in South Carolina in the United States circuit court after elaborate argument. The same question was up in the State of Pennsylvania, and I believe it has been decided somewhere in a circuit court in the Western States, but I cannot recall the case. I have not the case before me now, but I know it was so decided. There is this principle about it: That the standing aside must be exercised as the name is called, and before there is any preliminary examination as to the qualifications of the juror; in other words, that as the clerk calls the name the Government must exercise the privilege that has existed ever since the formation of courts in England and elsewhere. As a name is called the Government simply say, "Stand aside for the present," which is challenge without assigning cause. Of course when brought up to take the book it is too late to do it.

The COURT. When the Government has but three challenges, what limit is there to standing aside?

Mr. KER. The principle of that is that where the right of standing aside has been so universally recognized it arose from the fact that the Government always was at a disadvantage. Where they had but three challenges, and the defense had more than three challenges, there was given to the Government the right to stand aside, or rather to challenge without assigning cause. Your honor will remember the case cited by my distinguished friend from Ohio, this morning, where he spoke of the organization of jurors from the time of Edward down to Henry, and the different challenges and the reason why allowed. It has been solemnly decided by the courts of England that inasmuch as the Government was not on the same footing with the defense, they were entitled to this right. When it was brought down to 20 challenges under the reign of Henry, then in that case, although the Government had no challenges, they were allowed to stand aside *ad libitum* until the panel was exhausted. I say that has been decided in South Carolina, and I believe it will be so decided in Pennsylvania. It is a great right for the benefit and advantage of the United States, because they are not in the same situation as are the defendants. They have a less number of challenges. And besides the defendant is not entitled to select a jury. He is simply entitled to have a jury that is called from the vicinity, and he has a right to challenge particular people. He is not entitled to a selection of the jury. He is simply entitled to say that from that jury, according to the number of challenges—that is, out of the entire panel, and not out of twelve—he is permitted to challenge

a certain number. If the Government exercises its right of standing aside, then in that case after the panel is exhausted they come back in regular order, and the defendants can exercise their right again. I do not want your honor to misunderstand me in this particular; I have never known it to be exercised after the book has been placed in the hands of the person, and he has been scrutinized by one side or the other. It is done prior to any preliminary question being asked as to whether they have formed or expressed an opinion. At the same time it does not debar us, when our turn comes, from saying that we will accept the juror or subject him to an examination. We simply say "stand aside" until the panel is exhausted, and then in the regular way we scrutinize his qualifications.

Mr. BLISS. Your honor, I will say a single word. I think Mr. Ker did not hear the suggestion you made as to the Government's having three challenges. Your honor will bear in mind the reason why the juror stands aside—and cannot be put aside after any questions have been asked him—it is precisely that he may stand aside, either for the purpose of reserving the right of peremptory challenge or because we expect to be able to challenge him for cause. You cannot disclose the ground for standing him aside by asking any question whatever. If you ask him a question the right is gone. That I understand to be the decision in South Carolina. The discussion has been published in pamphlet form.

Mr. COLE. Your honor, the precise question is disposed of in the case of *The United States against Butler*, in which his honor, the Chief Justice, and Judge Bond concur. Immediately following what I read before is this:

The impaneling of the jury was proceeded with until one Haines was called.

He was examined on his *voir dire*, and was then told by the counsel for the Government to stand aside.

The defense objected, and insisted that the prosecution must either exercise its right of challenge or waive it entirely and at once.

For the prosecution it was contended that the right of qualified challenge in the courts of the United States was sustained by the Supreme Court of the United States in the case of *The United States vs. Marchant & Colson*, 12 Wheat., 480.

The rule laid down in that case was subsequently followed in the circuit court for the eastern district of Pennsylvania, in the case of *The United States vs. Wilson & Porter*, 1 Bald., 78.

The court held that this rule was in force when the Government had no right of peremptory challenge, but as the right of challenging jurors peremptorily has been given the prosecution, it should stand on the same footing with the defense and either exercise the right of challenge at once or not at all.

Mr. INGERSOLL. Even under their claimed decision they cannot have this gentleman stand aside.

Mr. BLISS. No; I do not think they can.

The COURT. Of course not.

Mr. BLISS. This decision was quoted. The decision that we refer to was made by the same judge.

The COURT. The decision confirms my impression about the law. The practice of standing aside was allowed when the Government had no peremptory challenges at all. But when the statute gives each side its own number of peremptory challenges, I do not see why the challenges should not be made on the one side as well as on the other when the jury is called.

Mr. WILSON. Will not your honor allow me to make a suggestion in connection with this matter. I do not speak very often and do not say very much when I do speak, but I want to make a suggestion as to my idea of the reason and philosophy of this thing. Here is a case *where one party has two challenges and the other party, I will say for*

example, has twelve, or I will make it even, three and three, by way of illustration. Now, the Government in this case must tender the jury. Let us see how this will work out, and if there is not a little common sense in it. The Government looks over the jury and have a right to ask every juror just such questions as they see fit to ascertain whether or not there is any circumstance in connection with the position of that juror which should induce them to challenge him for cause, although he may be a perfectly competent juror under the investigation which your honor has already made. They have a right to find out just what the circumstances and surroundings of the juror are, in order to enable them to determine whether or not they will peremptorily challenge him, because we have come to that stage of the case where the challenges are peremptory as I understand it.

The COURT. No, we have not gone beyond the stage where if the Government or either side chooses to impeach the competency of the juror inquiry may not be made of him on the subject.

Mr. WILSON. Yes; but that is a little off the line of what I am talking about. I am assuming now for the purposes of what I was going to state that all these gentlemen have shown themselves to be entirely competent to sit as jurors in this case.

Mr. INGERSOLL. Provided.

Mr. WILSON. Well, certainly, I am limiting my inquiry now. We have gone into the stage when we are making peremptory challenges on both sides. That is a point I want to bring to your honor's attention. The prosecution look at the juror and ask these questions, and they exercise such peremptory challenge as they see fit to exercise, and the jury is filled up. Then they are turned over to us. The Government say, "We are satisfied. We have challenged one." Now as that jury stands they are entirely satisfied with it, and they turn it over to us and we look at it. I will suppose that going through the same process we challenge too. Then we turn it back to them. They say, "We are satisfied," and then the jury is sworn. But if they are not satisfied they can challenge one, and so we go on until the challenges are exhausted. That gives both parties an opportunity to determine as to the character of the jury from the time it is called until all the challenges are exhausted. That has been the practice wherever I have had any experience in connection with these matters, and I think it is the right practice, because I think that so long as the prosecution have the right of challenge they should exercise it; for the jury is constantly changing, as was said a moment ago by one of the gentlemen on my side. At this minute I might be perfectly satisfied with it, but after our friends have exhausted three challenges and got three new men on the jury, I might not be so well satisfied with it.

The COURT. The practice——

Mr. BLISS. [Interposing.] Before you say anything, your honor, may I read a paragraph from Wharton on Criminal Law, which the assistant district attorney has just handed me.

The COURT. You may read it, but I was going to overrule this motion.

Mr. BLISS. It is in the last edition of Wharton, section 3051:

At common law the Government has no peremptory challenges, but, unlike the defendant, it is not required to show cause until after the panel is exhausted, having the power of setting aside individual jurors till that period, when, if the jury-box be not then filled, the set aside jurors will be severally called, and unless adequate cause is shown against them, will be chosen. Such is still the practice in the Federal courts, and in such of the States as have not in this respect superseded the common law by statutes.

Mr. INGERSOLL. Wherever a challenge is given to the prosecution the colonel's law has been changed by statute.

The COURT. Call the next juror.

Mr. MERRICK. Let him stand aside.

The COURT. Do you challenge him ?

Mr. MERRICK. Will your honor allow me to have him stand aside ?

The COURT. No, sir.

Mr. MERRICK. I challenge him.

Mr. TOTTEN. I object to the prosecution having any peremptory challenges. I am not dissatisfied with your honor's decision at all, but I think we may desire to save that point.

The COURT. You take so much of the decision as is on your side.

Mr. TOTTEN. Yes.

Mr. INGERSOLL. That shows a liberal spirit.

JOHN B. DAWSON was called by the clerk.

The COURT. Gentlemen, there is a good juror for you.

Mr. MERRICK. It is for them to say as to this juror.

Mr. WILSON. No.

The COURT. Yes.

Mr. TOTTEN. Your honor has decided that the Government is to make its objection.

The COURT. The Government is tendering you a jury.

Mr. WILSON. Then we want twelve men. There are only eleven.

The COURT. You will have twelve before you get through.

Mr. WILSON. We are entitled to select from the full panel. The Government having challenged a man, we ask that this place be filled before we proceed to exercise our judgment as to whether we will accept the jury or not.

The COURT. I think you are right about that. Call another juror.

JOSEPH HESSE was called, sworn on his *voir dire*, and examined, as follows :

By the COURT :

Question. Have you formed or expressed an opinion with reference to the guilt or innocence of the accused ?—Answer. No, your honor, I have not.

The COURT. He is competent. Now, Mr. Dawson, you will be subject to inspection.

JOHN B. DAWSON.

Mr. MERRICK. It is for the defendants to say first as to this juror.

Mr. INGERSOLL. I understand the law to be just this : They at first pass upon a jury. It is for them to say whether they accept this gentleman or not. They did not accept Mr. Wood.

The COURT. They did not.

Mr. INGERSOLL. They challenged him. Then Mr. Dawson was called. They made the vacancy. Therefore, they must first say whether they will take him or not.

The COURT. But Mr. Dawson does not fill anybody's vacancy.

Mr. INGERSOLL. I should think he was big enough to fill almost any vacancy. I do not see how vacancy could exist in his neighborhood. Now, as they struck out a juror they must furnish another. Let us see if this rule will not work perfectly ; they tender us twelve men. We challenge one man. Then another is called. Now, we have first to say

whether we will take that man; that is because we have excused a man. But I insist, and there is no decision any other way, I make bold to say, on this earth——

The COURT. Oh, well, it is not worth while to discuss it. The juror is offered to you now.

Mr. INGERSOLL. Do they offer him to us?

Mr. MERRICK. No.

Mr. INGERSOLL. The Government must first accept.

The COURT. You insist that it is their challenge? There is a vacancy. They have made that vacancy and tender you another juror.

Mr. INGERSOLL. They haven't tendered him. They must first examine and accept him.

The COURT. The court has examined him on his *voir dire* and presents him as a competent juryman.

Mr. INGERSOLL. Now, will the Government remember that "in presenting jurors for challenge the Government must first exercise its right and then the defense." There are twelve men examined by your honor upon their *voir dire* touching whether they have formed or expressed an opinion. You do not go further than that. You say, as far as opinion is concerned, they are competent jurors. Now, there may be questions of relationship, a question as to whether they have been on a jury within a certain time. There may be a thousand questions which the Government or the defendants may take into consideration in determining whether or not they will challenge either for cause or peremptory.

Now, the Government must say what they will do with this man. If the Government says, "We will take him," and we take him, then the Government goes on to the next juror; but if the Government takes him and we refuse him, then we accept the next juror and tender him to the Government.

The COURT. [To counsel for the Government.] Have you anything to say on that subject?

Mr. MERRICK. Only that I suppose the practice will be as suggested by the counsel, who has just taken his seat, in a speech this morning. If I understood him correctly, there was to be alternation as long as our challenges lasted.

The COURT. The alternation has got to the other side now. I think the rule as laid down just now is the correct one, and we will adhere to that.

Mr. MERRICK. What is that rule?

The COURT. The rule is that when a juror's name is called he will be submitted to you for your objection. If you object to him the court will allow you to examine him in regard to his relationship to any of the parties, or as to any of the reasons of challenge for cause. If you pass him without objection he goes to the other side and they may say whether they accept him or not.

Mr. MERRICK. If they reject him then they tender me one.

The COURT. No; they do not tender you one. Another juror is called.

Mr. MERRICK. Do they not have the first choice then?

The COURT. It goes to the Government again.

Mr. MERRICK. I think that is putting the Government to a disadvantage, your honor.

The COURT. How can there be any alternation between three and twenty-eight?

Mr. MERRICK. As long as it lasts it may be good.

The DISTRICT ATTORNEY. I suffered at one time under a ruling of your honor on that subject. Your honor held that the right of challenge

should alternate, that the Government should challenge one and then the defense challenge another. I happened to be defending at that time, and the prosecution held that they were not compelled to exhaust their entire challenges. Your honor then allowed the prosecution to alternate something in the relation in which those challenges were given by law, because your honor very properly stated that it was unfair to compel the prosecution, where the defense had so large a number of challenges, to exhaust their challenges on a panel they might know nothing about. There being no law governing the question of when the prosecution shall be compelled to challenge, or when the defense, your honor can say that they shall alternate, or that they shall challenge one before the Government shall be called upon to exercise their right.

The COURT. The Government, with its judicial organization, brings twenty-six jurors into court. They are presumed to be qualified. The other side has a right to challenge to a much larger extent than the Government. The Government, by statute, has the privilege of challenging three. These jurors are presented to be challenged. It is the proper course. I think there cannot be any alternation between three and twenty-seven.

Mr. MERRICK. Twenty-eight.

The COURT. Twenty-eight; and that the most regular and orderly way would be when a juror is called, that the Government shall have the privilege in the first place of making an inquiry whether he is competent or not.

The DISTRICT ATTORNEY. Will your honor allow me to suggest the great injustice done to the Government, if the Government must exhaust their entire right to control this panel with the first three jurors.

The COURT. You will have to attack the statute for that.

The DISTRICT ATTORNEY. The statute does not fix any order.

The COURT. By the common law the Government have no right to challenge. The Government now has the right to three challenges, and the others to twenty-eight.

Mr. MERRICK. Your honor rules that the Government must first pass, all the time.

The COURT. Yes.

Mr. MERRICK. The statute puts me at a disadvantage, and that ruling puts me at a still greater one.

The COURT. The statute gives you a privilege which you did not possess before. There can be no alternation here. We will have to proceed in some sort of order.

Mr. MERRICK. There can only be alternation up to the time that my challenges are exhausted.

The COURT. We had better have a rule that will apply to all stages.

Mr. MERRICK. It would be one rule until my challenges were exhausted.

The COURT. And then another rule.

Mr. MERRICK. No; then I would have nothing to say.

The COURT. The matter is settled. Have you anything to say as to Mr. Dawson?

Mr. MERRICK. No, sir; I have nothing to say. We will take him.

The COURT. Do you take Mr. Dawson on the other side?

By Mr. INGERSOLL:

Question. Have you been on the jury within two years in this court?

—Answer. No, sir; nor in any other court. I was on the jury about eight years ago; not since.

Q. Have you had any conversation with other jurymen as to how this case ought to be decided?—A. No, sir; not as to how it should be decided. I have had frequent conversations, not only with members of this jury, but with others with reference to the star-route cases, but not in regard to its merits, or as to what should be the conclusion or verdict.

Q. Have you discussed any points of evidence in this case or facts that you heard to be facts?—A. None whatever.

Q. Have you been a contractor for carrying mail for the Government?—A. No, sir.

Q. Have you ever been security for anybody?—A. No, sir.

Q. Never been interested directly or indirectly?—A. Neither directly nor indirectly.

Q. How old are you?—A. I am 57.

Q. How long have you lived in this District?—A. I have lived in this District about twenty-eight years.

Mr. INGERSOLL. We challenge Mr. Dawson peremptorily and charge it to Stephen W. Dorsey. That is a pretty heavy charge. [Laughter.]

The COURT. Call another.

The CLERK. To fill up that vacancy?

The COURT. Yes, to fill up that vacancy.

CHARLES H. BLISS called, sworn on his *voir dire*, and examined.

By the COURT:

Question. Have you formed or expressed an opinion in regard to the guilt or innocence of either of the defendants in this case?—Answer. No, sir.

The COURT. Mr. Bliss is competent.

Mr. TOTTEN. Call the next one.

JOHN W. HAYES, called.

Mr. MERRICK. Do you rule that I must pass on him first, they having vacated the place?

The COURT. Yes, you must pass on him first.

By Mr. MERRICK:

Question. Mr. Hayes, have you talked about this case at all?—Answer. No, sir; only jokingly. I was talking last night with Mr. Charlie Nye.

Q. What did you tell him?—A. He wanted to know how much I was going to get on the star-route cases. I told him about \$5,000.

Q. You told him \$5,000?—A. About \$5,000; only jokingly. That is the only conversation I ever had on the subject. That was only jokingly.

Q. You never talked with anybody else at all?—A. No, sir; I never talked with anybody else at all. I have heard it discussed several times; but never had any other conversation about it.

Q. Discussed in your presence?—A. Yes, sir.

Q. What did you hear?—A. Talk about the jury; they didn't know how the case was going, and so on; didn't know whether it would ever come to trial.

The COURT. Well, we cannot go into these particulars.

Mr. HAYES. That is all I have heard about it. I have said that I did not think it would ever come to trial myself.

By Mr. MERRICK:

Q. Why did you think so?—A. I have seen how things went on here in court. I have been on this panel here; not lately, though.

Q. What Nye was this you had this conversation with?—A. Charlie Nye.

Q. Where did the conversation take place?—A. In a cigar store.

Q. Which cigar store?—A. Murphey's. Says he, "I see you are on the jury." Says I, "Yes." Says he, "Are you going on the star routes?" Says I, "Indeed I don't know." He wanted to know how much I was going to get. Says I, "Maybe \$5,000," jokingly. Him and me are always poking fun at one another.

The COURT. Do you accept him or challenge him?

Mr. MERRICK. I challenge him for cause in the conversation he has just stated, and ask your honor to pass upon him. A man who will joke in that way about a serious matter like this I do not think ought to be on the jury, and I submit it to your honor, even if it was a joke.

Mr. MCSWEENEY. That is an intimation, then, that this whole trial is to be mighty solemn.

The COURT. I do not think that anything has been said by the jurymen to show that he is disqualified on the cause you state.

Mr. HAYES. I will state, your honor, that there has been some joking every day, on every occasion, about the matter.

The COURT. We cannot stop persons from joking. It is the disposition of almost every man to joke. He is not bound by his jokes. The opinion which he may have expressed in a joke may not be his sober opinion.

Mr. MERRICK. That may be so. I do not mean to say it is different in this case. I do not mean to say that this was in earnest.

The COURT. This jurymen says it was a joke.

Mr. MERRICK. It may be a joke, but it is a serious matter to joke about. With all due respect, though I do not mean to impeach him directly, such a remark as that is sufficient cause to challenge.

The COURT. Oh, I cannot think so.

Mr. MERRICK. Then I challenge him. I do not think he ought to be on the jury.

HENRY A. OLCOTT called, sworn on his *voir dire*, and examined, as follows:

By the COURT:

Question. Have you formed or expressed an opinion in regard to the guilt or innocence of the defendants in this case?—Answer. No, sir; I have not.

Q. Or any of them?—A. No, sir; I have not.

The COURT. Call the next one.

MATHEW MCNELLY called and examined.

The COURT. What do you say to this man?

Mr. MERRICK. Mr. Bliss will raise a question on this man for the purpose of having a decision.

Mr. BLISS. We seem to have gone on a little, perhaps, without thoroughly understanding the precedent before, and for the purpose of having a decision—and perhaps not, if it is decided against us—one in which we will have any remedy, I ask that this juror stand aside, and while I do not desire, if your honor thinks I ought not, to call your attention to any decision upon the subject, I would like an opportunity to call your attention to one decision of the Supreme Court of the United States, for which I have sent, in which they say that while surprised at the claim they felt bound to grant it, on the ground that the Supreme

Court had passed upon the question. Now, your honor has already decided it.

The COURT. I shall adhere to my opinion.

Mr. BLISS. Well, your honor, we ask to have the juror stand aside, and your honor declines.

The COURT. Yes, I decline. Call the next.

Mr. MERRICK. Just allow me one moment.

The COURT. Oh, yes.

Mr. MERRICK. I am only engaged in part in the selection of this jury. There is another person engaged on the rest of it. [After consultation.] We will take him, your honor.

Q. [After a pause.] Mr. McNelly, you have not been on the jury for two years?—A. No, sir.

Mr. TOTTEN. You accept him?

Mr. MERRICK. Yes, sir.

Mr. TOTTEN. Very well, I take him.

Mr. MERRICK. I presume if I reject him, and nothing transpires between that and another question, I may take him?

Mr. TOTTEN. I presume not.

Mr. MERRICK. He is accepted by the Government.

Mr. INGERSOLL. On the part of all the defendants we accept him.

GEORGE E. KIRK called and examined.

By Mr. MERRICK:

Question. You have not served on a jury in the last two years, have you?—Answer. No, sir; it is about five or six years since I was on a jury.

Mr. MERRICK. We will take him, gentlemen.

Mr. TOTTEN. We challenge Mr. Kirk, and charge it to Mr. Brady.

Mr. MERRICK. How many challenges is that?

Mr. WILLIAMS. We have had two, and you have had two.

WILLIAM HOLMEAD called, sworn on his *voir dire*, and examined.

By the COURT:

Question. Have you formed or expressed any opinion with regard to the guilt or innocence of the defendants?—Answer. I have not.

The COURT. Call another.

JOHN B. MCCARTHY called and examined.

By Mr. MERRICK:

Question. Have you served on a jury within the last two years?—Answer. No, sir; I have not. This is my first time on a jury.

Mr. MERRICK. We will take him.

Mr. INGERSOLL. We will take him.

JOHN T. FINNY called and examined.

By Mr. MERRICK:

Question. Have you served on a jury within the last two years?—Answer. No, sir; this is my first experience.

Mr. MERRICK. We will take him.

Mr. TOTTEN. We challenge him, your honor, and charge it to Mr. Turner.

SAMUEL QUEEN called, sworn on his *voir dire*, and examined.

By the COURT :

Question. Have you formed or expressed an opinion in regard to the guilt or innocence of the defendants or any of them ?—Answer. I have not, sir.

Mr. INGERSOLL. Call the next one.

EDWIN J. MCLAIN called and examined.

By Mr. MERRICK :

Question. Have you served on the jury in the last two years ?—Answer. This is my first experience, sir.

Mr. MERRICK. We will take him.

Mr. INGERSOLL. We will take him.

WILLIAM K. BROWN (colored) called.

Mr. MERRICK. We will take him.

Mr. INGERSOLL. We will, too.

FREDERICK C. SHAW called and examined.

By Mr. MERRICK :

Question. Have you served on a jury within the last two years ?—Answer. This is my first experience.

Q. How long have you resided in the District ?—A. Over twenty years.

Q. Have you ever talked about this subject at all ?—A. Well, I think I have talked around among the jury.

Q. Have you talked to other people about it ?

Mr. SHAW. Do you mean outside ?

Mr. MERRICK. Yes.

A. No, sir.

Q. Did you ever talk with Mr. Wood ?—A. No, sir ; I never had any conversation with Mr. Wood. Mr. Wood is not on my panel.

Q. I mean another Mr. Wood. Did you ever talk with Mr. Wood about it ?—A. No, sir.

Mr. MERRICK. We will excuse Mr. Shaw. That exhausts our right. We can begin to alternate now. We have no further right of peremptory challenge, but of course our inquiries may proceed.

JOHN E. F. CARLIN called, sworn on his *voir dire*, and examined.

By the COURT :

Question. Have you formed or expressed an opinion in regard to the guilt or innocence of the defendants in this case ?—Answer. No, sir ; I have not.

Q. Or any of them ?—A. No, sir ; I do not know any of them.

The COURT. Take your seat. You are competent. Call the next juror.

EDWIN D. DONIPHAN called and examined.

By Mr. MERRICK :

Question. I believe you answered the court that you have not expressed an opinion about this matter ?—Answer. I have not expressed any opinion, sir.

Q. You have not formed any opinion?—A. None at all, sir.

Q. Have you served on a jury within the last twelve months?—A. No, sir.

Q. Within two years, I should have said?—A. No, sir; I have not.

The COURT. What do you say on the other side?

Mr. INGERSOLL. We will take him.

JOSEPH HESSE called and examined.

By Mr. MERRICK:

Question. Have you served on a jury within the last two years?—Answer. Never in my life.

Mr. MERRICK. I will exercise my rights. A man who has never served on a jury ought to be taken.

Mr. INGERSOLL. We will excuse him and charge it to Rerdell.

CHARLES J. WRIGHT called, sworn on his *voir dire*, and examined.

By the COURT:

Question. Have you formed and expressed an opinion in regard to the guilt or innocence of the defendants?—Answer. I have not.

Q. Or any of them?—A. I have not.

The COURT. Take your seat.

CHARLES H. BLISS called.

Mr. BLISS. We will take him of course.

Mr. INGERSOLL. It is for you to say that.

Mr. BLISS. No; we haven't anything to say.

Mr. TOTTEN. You can put conundrums.

Mr. INGERSOLL. Does the Government waive its right to ask him anything?

Mr. MERRICK. We will waive our rights.

Mr. INGERSOLL. We will excuse him and charge it to John W. Dorsey.

THOMAS MARTIN called, sworn on his *voir dire*, and examined.

By the COURT:

Question. Have you formed or expressed an opinion in regard to the guilt or innocence of the defendants in this case, or any of them?—Answer. I have not.

HENRY A. OLCOTT called and examined.

By Mr. MERRICK:

Question. Have you served on a jury within the last two years?—Answer. No, sir.

Q. I believe you stated to the court that you had not formed or expressed any opinion on this subject at all?—A. I have not, sir.

Mr. INGERSOLL. He suits us.

WILLIAM HOLMEAD called and examined.

By Mr. MERRICK:

Question. Have you served on a jury within the last two years?—Answer. It has been six years since I was on the jury—in the Paul and Shoemaker case.

Mr. INGERSOLL. He suits us.

SAMUEL QUEEN called and examined.

By Mr. MERRICK :

Question. Have you served on a jury within the last two years ?—

Answer. Only except the one I am on now.

Mr. MERRICK. Well, that is all I have to ask him.

Mr. INGERSOLL. All right ; we will take him.

Mr. HINE. Wait a moment.

Mr. MERRICK. He has been accepted.

Mr. HINE. He has not been accepted on the part of Mr. Vaile.

Mr. MERRICK. Mr. Totten said just now that when I said I had accepted him I had no right to withdraw it ; that it had passed beyond me.

Mr. TOTTEN. Mr. Hine did not say he had accepted him.

Mr. MERRICK. Well, one of the nebulous mist of counsel who seem to be acting for the whole accepted him.

The COURT. Who said it ?

Mr. INGERSOLL. Mr. Vaile and Mr. Hine were talking, and I understood Mr. Vaile was satisfied and said it, and as I said it, he shook his head and said he did not accept him.

The COURT. Oh, well, Mr. Merrick, it is a misunderstanding.

Mr. INGERSOLL. And on the other occasion I said they should have the right to accept or reject at any time.

Mr. MERRICK. I only wanted him because I believe Mr. Queen is a good juror.

BARNET VANFLEET called, sworn on his *voir dire*, and examined.

By the COURT :

Question. Have you formed or expressed an opinion in regard to the guilt or innocence of the defendants, or any of them ?—Answer. I have not, sir.

JOHN E. F. CARLIN called and examined.

By Mr. MERRICK :

Question. Have you served on a jury within the last two years ?—

Answer. I have, sir. It is two years ago.

Q. Is it within two years ?—A. I think it is about that.

Q. How can you ascertain ?—A. I think it was, to the best of my recollection.

Q. Was it within two years or outside of two years ?—A. Well, just about two years, I think, this June, to the best of my recollection.

Mr. MERRICK. I have nothing further to ask him.

Mr. HINE. I think I will challenge Mr. Carlin and charge it to Mr. Miner.

JOHN G. PREINKERT called, sworn on his *voir dire*, and examined.

By the COURT :

Question. Have you formed and expressed an opinion in regard to the guilt or innocence of the defendants or any of them ?—Answer. I have not.

CHARLES J. WRIGHT called and examined.

By Mr. MERRICK :

Question. Have you served on a jury within the last two years ?—

Answer. No, sir ; this is my first experience.

Mr. MERRICK. I have nothing further to ask him.

Mr. TOTTEN. We challenge Mr. Wright for Turner.

JOHN M. STEWART called, sworn on his *voir dire*, and examined.

By the COURT:

Question. Have you formed and expressed an opinion in regard to the guilt or innocence of the defendants or any of them?—Answer. I have not.

THOMAS MARTIN called and examined.

By Mr. MERRICK:

Question. Have you served on a jury within the last two years?—Answer. I have not.

Q. What is your age?—A. Twenty-six.

Q. I believe you answered the court that you had not formed or expressed any opinion?—A. Yes, sir; I did.

Mr. MERRICK. That is all I have to ask him.

Mr. TOTTEN. Accepted, your honor.

BARNET VANFLEET called and examined.

By Mr. MERRICK:

Question. Have you served on a jury within the last two years?—Answer. I have not, sir; this is the first time.

Mr. MERRICK. That is all I have to ask him.

Mr. TOTTEN. Challenged, for John W. Dorsey.

GEORGE W. COX called, sworn on his *voir dire*, and examined.

By the COURT:

Question. Have you formed and expressed an opinion in regard to the guilt or innocence of the defendants or any of them?—Answer. I have not, sir.

JOHN G. PREINKERT called and examined.

By Mr. MERRICK:

Question. Have you served on a jury within the last two years?—Answer. No, sir.

Mr. MERRICK. That is all I have to ask him.

Mr. TOTTEN. We will challenge Mr. Preinkert, and charge it to Stephen W. Dorsey.

RUDOLPH H. EVANS was called, sworn on his *voir dire*, and examined, as follows:

By the COURT:

Question. Have you formed or expressed an opinion with regard to the guilt or innocence of the defendants or any of them?—Answer. No, sir.

The COURT. You may take a seat in the box.

JOHN M. STEWART was examined, as follows:

By Mr. MERRICK:

Question. Have you served on the jury for the last two years?—Answer. No, sir.

Mr. MERRICK. I have nothing further to say.

Mr. HINE. I will challenge him, and charge it to Mr. Vaile.

The CLERK. There are no more jurors to call to fill up.

The COURT. How many have been accepted?

The CLERK. Nine; and two more have not been acted upon.

The COURT. Call them.

The clerk called GEORGE W. COX, and he was examined, as follows:

By Mr. MERRICK:

Question. Have you served on a jury in the last two years?—Answer. I never have, sir.

Mr. INGERSOLL. We would like to have the vacancy filled in the panel.

Mr. MERRICK. You cannot have it filled with talesmen.

The COURT. The court would have to order talesmen to be summoned.

Mr. MERRICK. Not till the panel is exhausted, I suppose. The vacancies are filled on the panel as they occur.

The COURT. I understand the panel to be exhausted.

Mr. BLISS. No, sir; there are two jurors uncalled. I submit that the panel cannot be filled up by talesmen until the jurors are all called.

The COURT. Yes.

Mr. TOTTEN. We have a right to a full box, your honor.

Mr. BLISS. No; not with talesmen.

Mr. INGERSOLL. No matter.

Mr. MERRICK. The juryman is standing waiting to be interrogated.

Mr. TOTTEN. Mr. Cox is accepted, your honor.

RUDOLPH H. EVANS was examined, as follows:

By Mr. MERRICK:

Question. Have you served on the jury in the last two years?—Answer. Not within the last twenty years.

By the COURT:

Q. What is your age?—A. I am over 63, sir.

Q. Not 65?—A. No, sir.

Mr. INGERSOLL. Has he had experience enough to disqualify him?

The COURT. Sixty-five is the disqualifying age.

Mr. INGERSOLL. He has not had enough experience yet.

By Mr. INGERSOLL:

Q. Are you a practicing physician?—A. No, sir; I have retired.

Mr. INGERSOLL. We will challenge him anyway, and charge him to Mr. Brady.

The CLERK. That exhausts the panel.

The COURT. There are ten jurors accepted.

The DISTRICT ATTORNEY. Ten accepted; yes, sir.

The COURT. The marshal will bring in four talesmen.

Mr. MERRICK. Now or in the morning?

The COURT. Now. I propose to have a jury sworn this evening before we leave here.

The marshal brought four talesmen in the court, and of them

JAMES E. GREER was sworn on his *voir dire*, and examined, as follows:

By the COURT :

Question. Have you formed or expressed an opinion with regard to the guilt or innocence of any of the defendants in this case?—Answer. I don't know anything about the case. I don't know what the case is.

The COURT. It is what is called the star-route case.

The TALESMAN. The star-route case ?

The COURT. Yes.

The TALESMAN. Really, I know so little about it that I have never formed an opinion.

The COURT. Then you are right. Take your seat and hear what the counsel say.

The DISTRICT ATTORNEY. Your honor, these men are talesmen and we would like to know in what part of the city they live and what is their business in order to get some idea about them.

The COURT. You may put those questions with a view to making a challenge for cause.

By the DISTRICT ATTORNEY :

Q. Where do you reside?—A. On the corner of Seventh and O streets.

Q. What business are you in?—A. Grocery.

Q. How long have you been in the city?—A. I have been in the city ever since I was 9 years old.

Q. Have you been on the jury within two years?—A. No, sir; I never was on a jury. I did not expect to be brought in here until I was brought in. I had some business with a juror on the other side, and I was waiting to see him and was brought in here. It was quite a surprise. I did not know what was going on.

Mr. MERRICK. That is all we want to ask him.

Mr. TOTTEN. Where are the rest of the talesmen? We want to have them all here.

The COURT. Call another.

The clerk called—

HUGH T. MURRAY, and he was sworn on his *voir dire*, and examined, as follows:

By the COURT :

Question. Have you formed or expressed an opinion in regard to the guilt or innocence of the defendants in this case?—Answer. I have not, sir.

Q. Do you know what case it is?—A. Yes, sir.

The DISTRICT ATTORNEY. In what part of the city do you reside ?

Mr. INGERSOLL. Wait a moment. We want to understand about the other talesmen.

The COURT. You do not go into the inquiry with regard to Murray.

Mr. BLISS. Will your honor allow me to make a suggestion ?

The COURT. Yes.

Mr. BLISS. I apprehend that in the case of a talesman the uniform practice is, there being no panel, that each talesman shall be acted upon and disposed of by himself. In the old practice when one was wanted they sent out for a single talesman. The fact that they are entitled to draw from a certain number cannot in fairness be affected by the fact that the court orders four talesmen instead of two or one.

The COURT. That is exactly what I have done. This jury is filled up. When there are twelve men there are enough, and we ought not to call any more till they are disposed of.

Mr. TOTTEN. We will challenge Mr. Greer, and charge him to Rer-dell.

The clerk called—

ALONZO H. PARKS, and he was sworn on his *voir dire*, and examined, as follows:

By the COURT:

Question. Have you formed or expressed an opinion with regard to the guilt or innocence of the defendants in this case?—Answer. I have not.

Q. You know what case it is?—A. Yes, sir.

The COURT. Take a chair.

HUGH T. MURRAY was examined, as follows:

By the DISTRICT ATTORNEY:

Question. What is your business?—Answer. Not anything at present.

Q. Were you a clerk at the Capitol?—A. I was; yes, sir.

Q. What were you clerk of?—A. In the House folding-room.

Q. Are you a resident of the District?—A. I am.

Q. For how long?—A. Thirty-three years.

Q. You have not served on a jury for two years?—A. I was on last year temporarily; not on the regular panel.

Q. Were you a talesman?—A. No, sir.

The CLERK. He was summoned to fill up the panel at this term.

The COURT. He does not fall within the rule.

Mr. TOTTEN. We accept Mr. Murray, your honor.

The COURT. Major Williams says that under Judge Hagner's new law it is a ground of challenge.

The DISTRICT ATTORNEY. It does not disqualify him, as both parties accept him.

Mr. TOTTEN. The law referred to is a statute that was passed. Judge Hagner drew the statute, and Judge Richardson compiled the law.

Mr. BLISS. It is a ground of challenge, as I understand it; and the subsequent act is the act that is sometimes construed as changing two years to one year:

No person shall serve as a petit juror more than one term in any one year; and all jurors to serve in courts after the passage of this act shall be drawn in conformity herewith.

The COURT. There is no ground of objection to this juror.

The clerk called—

ALONZO M. PARKS, and he was examined, as follows:

By the DISTRICT ATTORNEY:

Question. Where do you live?—Answer. Nine hundred and thirty-six F street.

Q. What business are you in?—A. Agent for the Globe Iron Works in New York.

Q. How long have you resided in the city?—A. Fifteen years.

Q. Have you been in that business during the entire time?—A. No, sir.

Q. What business were you engaged in beside?—A. I was in the Census Office.

Q. Clerk there?—A. Yes, sir.

Q. How long have you been out of that office?—A. About eight months.

Q. Have you served on a jury in this District before?—A. Yes, sir.

Q. When?—A. About five years ago.

Mr. TOTTEN. We challenge Mr. Parks, and charge him to John W. Dorsey.

ZACHARIAS TOBRINER, sworn on his *voir dire*, and examined, as follows:

By the COURT:

Question. Have you formed or expressed any opinion with reference to the guilt or innocence of the defendants?—Answer. No, sir.

Q. You know what case this is?—A. The star-route case.

By the DISTRICT ATTORNEY:

Q. What business are you in?—A. I am in the brokerage business.

Q. Are you a brother of Mr. Tobriner, the lawyer?—A. I am his father.

Q. How long have you lived in the District?—A. Twenty-two years.

Q. Have you ever served on a jury before?—A. No, sir.

By Mr. INGERSOLL:

Q. What is your business at present?—A. Commission business, brokerage and real estate.

Q. Have you heard any talk about this star-route business?—A. I have.

Q. Have you ever talked with anybody who pretended to know all the facts?—A. Not as I remember. I have been talking about it myself occasionally. I have read about it, too.

Q. Whom did you ever talk with about it?—A. I can't remember just now. There was so much talk about it.

Q. You think you could do justice in this case without regard to what anybody else said or what was published in any paper?—A. I think I could.

Q. Do you think you could decide it according to the evidence?—A. I think I could.

Q. You do not think you could be turned around by what might be said outside?—A. [No answer.]

Mr. INGERSOLL. I think he suits us. That fills the jury.

The COURT. Swear the jury. Are all the defendants here?

Mr. HINE and Mr. TOTTEN. They are all here, your honor.

The jury was sworn. It is as follows:

WILLIAM DICKSON.

JOHN W. HAYES.

JOHN B. MCCARTHY.

EDWIN J. McLAIN.

WILLIAM K. BROWN.

EDWARD D. DONIPHAN.

HENRY A. OLCOTT.

WILLIAM HOLMEAD.

THOMAS MARTIN.

GEORGE W. COX.

HUGH T. MURRAY.

ZACHARIAS TOBRINER.

Mr. MERRICK. If your honor please, I suppose the hour of adjournment has arrived and your honor will adjourn. I rise simply for the purpose of requesting your honor to impress upon the jury the absolute and imperative necessity of their carefully keeping themselves from permitting any conversation of any other persons upon the subject of this case, and from reading comments in the public press in re-

gard to it. The Government has no disposition whatever to ask your honor to exercise the discretionary power of requiring the jury to be secluded and put under guard. The season of the year would almost forbid such a thing.

The COURT. I do not think the court has the power.

Mr. MERRICK. I think it is clearly within the discretionery power of the court, but I do not ask it. I do ask your honor to caution the jury with great emphasis on the subject, for there is a great deal of talk about town in reference to the matter by parties who are more or less in interest. It is a fact that has come to my knowledge. There are publications in the press of the city severely assailing everybody connected with the case on the part of the Government, and not even omitting statements which materially and very seriously reflect upon the court—if they can be regarded as worthy of consideration or remark from anybody.

The COURT. After this case is over I shall probably call the attention of the grand jury to the subject.

Mr. MERRICK. I have the papers preserved and shall myself bring it to the attention of the court at the proper time. Informed of this condition of things, knowing who exercises control over these journals, and judging of the future by the experience of the past, I ask your honor to caution this jury against this press and against its emisaries that swarm the town.

Mr. TOTTEN. I might say, your honor, that there probably will be a general accounting after this trial is over. If anybody has been vilified and blackguarded and abused it is the defendants in this case by rascally newspapers not only in this city but all over the country that are sent here for the purpose of manufacturing public opinion. There will be two parties when the newspapers are called to account.

Mr. MERRICK. Then we both agree.

Mr. TOTTEN. Now, your honor, while I concur in the propriety of having the jury confine themselves to the testimony in this case, still if your honor chooses to give them some words of caution I have no objection and will favor it. But so far as we are concerned we do not think they need any lecturing. They probably know their duties as well as brother Merrick knows his. And when this newspaper business is ventilated we will be there.

Mr. MERRICK. I doubt if they do need lecturing, for some of them are entirely new in their experience as jurors, and I am sure will thank me for asking your honor to make the instructions, and thank your honor for giving the instructions. What I seek is their protection against annoyance. I seek to guard them against invasion from outside; that they may be taught how to repel it.

Mr. WILLIAMS. By the Government as well as the defense.

The COURT. [To the jury.] Oh, well, gentlemen, I know the fact as to many of you. You are all men of sense and experience. You know your duties, and you should take it as a personal offense if any person were to approach you improperly in regard to the performance of your duties in this case. With this admonition I leave the whole matter to yourselves. You are men of honor. You will not allow yourselves to be tampered with by anybody.

Mr. WILSON. Now, your honor, I desire to renew the motion that I made before the jury was impaneled with reference to the matter of electing between the trial of those who are officers and those who are not officers of the Government. I presume, of course, the court will adhere to its opinion, but I have thought it best to save the question

by making the motion to elect now that the jury is sworn, and before we actually enter upon the trial.

The COURT. To elect what?

Mr. WILSON. For the Government to elect whether it will proceed against those who were officers of the Government or against those who were not.

The COURT. There is but one count in the whole indictment, and all these parties here are charged as conspirators in one conspiracy. In my opinion there cannot be anything here to elect between. But you can file your motion, and I will overrule it.

The DISTRICT ATTORNEY. Will your honor fix the hours of meeting and adjourning.

The COURT. I shall not meet before 10 o'clock in the morning, and adjourn later than 6. Of course, there may be some days when a little longer sitting will enable us to reach a convenient place to stop, and I do not wish to lay down any exact rule on the subject. But the habit of the court has been to meet at 10 in the morning and adjourn at 3 in the afternoon.

Mr. MERRICK. That is what I supposed.

Mr. TOTTEN. We can all get pretty tired during that time in this court-room.

Mr. MERRICK. There may arise some exigency when your honor will meet earlier and sit later.

The COURT. There may be a time when we may see some good stopping place a little ahead of us when we may sit an hour longer. I can tell after a few days what is likely to be the length of this case. If it is a case that is going to take us a couple of months with ordinary sittings, I shall double the work each day, and sit Saturdays besides. This case I shall get through with between this and the 4th of July, if it is possible to do so by sitting late hours.

Mr. TOTTEN. Your honor, it will be through long before that.

The COURT. I hope so, because it is some risk to hold a jury and witnesses and the court and everybody down to hard work after the 4th of July. We must try and get through before the 4th of July.

The DISTRICT ATTORNEY. I do not think, your honor, there is any necessity of reading this indictment to the jury. It has been the practice here. Colonel Bliss is going to make the opening for the Government to-morrow, and he will state its contents to the jury. It will be a mere waste of time to read the indictment.

The COURT. I suppose one of the counsel for the Government will open for the jury. It is not necessary to read the indictment to the jury, but of course it is necessary to explain to them the nature of the charge and the issue in regard to it, and explain also what the Government expect to prove, so that the jury may have it in their minds as a guide whilst the testimony is being taken.

Mr. MERRICK. Mr. Corkhill's question was asked at my suggestion. I do not know what is the practice as to whether the indictment shall be read, or not. Of course the counsel who takes the opening, which is a very material part of the case, and Colonel Bliss will make the opening to the jury; will explain what is the charge and what he expects to prove, giving the jury and the court possession of the entire matter.

The COURT. That, I think, will be necessary.

Mr. MERRICK. It will take some time and tax his patience; but he is going through it very fully.

Mr. INGERSOLL. What is the order of proceeding? After the Government opens, then the evidence is introduced.

Mr. WILSON. No, sir.

The COURT. That depends upon the defendants. If the defendants choose to open their case after the Government has opened its case, they may do so.

Mr. INGERSOLL. Or wait.

The COURT. But if they do not choose to make the opening, the Government follow with their proof.

Mr. MERRICK. And I submit to your honor in this connection that the opening for the defense, whether made when the Government closes its opening, or made after the Government has closed its evidence, must be one opening.

The COURT. Oh, yes.

Mr. INGERSOLL. Yes, sir; there will only be one first speech.

The COURT. One first speech on either side.

Mr. INGERSOLL. I understand it.

Mr. MERRICK. That is what it means. We will see what one speech signifies by and by. We have had one joke here to-day; now we have another.

The COURT. Our practice is for the prosecution to open and then follow with its evidence, and after the evidence is closed the defense opens.

Mr. TOTTEN. Your honor, I think that our practice has been that the court usually invites the defendant's counsel to or asks him whether he will open his defense to the jury, or whether he will withhold his opening until the closing of the evidence.

Mr. MERRICK. That is so.

The COURT. I believe the practice is either way.

Mr. INGERSOLL. As to whether the defendants have the right to present their case, each one, to the jury, I want that reserved. I do not want any decision made about that now.

Mr. MERRICK. That is the one speech. There comes in the one speech. Now, I submit to your honor——

The COURT. [Interposing.] I am not going to allow but one opening.

Mr. MERRICK. That is what I want—one opening for these defendants.

Mr. WILSON. If your honor please, just one moment. I can see very well how you can divide this thing into two parts. Here are two men defendants who were not contractors, who had nothing to do with getting up certain papers that are to be commented upon, and all that. They occupy an entirely different relation to this case from the position occupied by the others. Now, what would be a perfectly plain and entirely adequate opening of the case, for example, for Mr. Vaile or for Mr. Dorsey, would relate to matters with reference to which Brady has had no relations whatever. He stands on an entirely different footing, and so does Mr. Turner.

The COURT. That may be in point. After the evidence goes in you may be able to show that. But on the face of this indictment, their relations were pretty intimate.

Mr. WILSON. Certainly; the indictment alleges that they were all combined together. Now, the counsel opening for Mr. Vaile might not deem it necessary as to him to proceed to point out to this jury all the features of the law of this case which must have a most important bearing upon it, and which it is exceedingly important that the jury should understand in order that they can make the proper application of the

testimony. Now, if Mr. Vaile's counsel, or whoever should happen to open this case on the part of the defense, should fail to bring to the attention of the jury some matters that I thought the jury ought to understand, in order to properly appreciate and apply this testimony, I should think I might, on behalf of our client, be permitted to bring that matter to the attention of the jury.

The COURT. So far as these defendants occupy a common ground in the indictment there will be but one opening heard. So far as each and any of them have a special ground of defense, I do not think that he ought to be prohibited from opening that special ground.

Mr. WILSON. That is all that I am asking, your honor.

The COURT. But so far as the defense is common to them all——

Mr. INGERSOLL. [Interposing.] As far as the conspiracy is concerned.

The COURT. Yes; and so far as the conspiracy is concerned is common ground. I cannot waste time in hearing more than one opening; but as to special grounds that may belong to any one of these defendants I shall not prohibit him from an opening.

Mr. WILSON. That is all I desire to call the attention of the court to.

Mr. HINE. I desire to say this, if the court please. I propose, if the court will permit, to take my own course in the defense and so far as the court will permit me. I represent two of the defendants. I do not think their defense is the same as any other one or two of the defendants and I am able to point that out to the court and the jury, and it is important that the court and the jury should understand it.

The COURT. I have just said that so far as you had a different ground of defense the court will not deny you that privilege. You can exercise your right. The court will now adjourn.

Thereupon (at 3 o'clock and 48 minutes p. m.) the court was adjourned until 10 o'clock to-morrow morning.

FRIDAY JUNE 2, 1882.

The court met at 10 a. m.

Counsel for the Government and the defendants being present.

Opening address to the jury of—

GEORGE BLISS, Esq.,

for the Government.

May it please the court and you, gentlemen of the jury, it has been assigned to me to open the case, and to state to you the ground which the Government has for appearing here to ask at your hands a verdict of guilty against the persons named in this indictment. It is natural that in any case which has required a good deal of preparation, and which has excited a good deal of attention, the counsel involved should come to regard the case as one of a great deal of importance. We do so regard this case; not only as of importance to the Government, but of importance to the defendants who await your verdict. In the view of the Government, by the fraudulent action of these parties, the direct action of these parties, more than six hundred thousand dollars has been fraudulently, if not corruptly, taken from the Treasury of the

the United States without any adequate return being made for it, and without any necessity of its being so taken on public grounds. It is important, too, from the former position of the parties involved. One of the parties was formerly the Second Assistant Postmaster-General of the United States, and as such was by virtue of his office charged with the regulation and the management and the control of the entire mail service of the United States so far as relates to the transportation of the mails, and having under his care practically the disbursement, I think, of about sixteen million dollars a year. Another of the defendants is an ex-United States Senator from the State of Arkansas. Of the position of the other parties concerned I shall have something to say before I get through with the remarks I am going to address to you.

Allow me at the outset, gentlemen, to say that it will be necessary for me to occupy a good deal of your time, for the case is in some respects complicated, involves a great mass of detail, involves some technicality of procedure and language, and is, as we regard it, surrounded and permeated by such a variegated character of frauds upon the Government that it will require considerable time to suggest them.

Upon the 33d page of the compilation of laws and regulations relating to the Post-Office Department will be found section 388 of the Revised Statutes, which provides for the organization of the Post-Office Department. It is as follows :

There shall be at the seat of Government an executive department to be known as the Post-Office Department, and a Postmaster-General, who shall be the head thereof, and who shall be appointed by the President, by and with the advice and consent of the Senate.

By the next section it is provided :

There shall be in the Post-Office Department three Assistant Postmasters-General, who shall be appointed by the President, by and with the advice and consent of the Senate, and who may be removed in the same manner.

There is given to the Postmaster-General, by section 161 of the Revised Statutes, authority, as follows :

The head of each department—

It is a general authority to the heads of all the executive departments of the Government—

is authorized to prescribe regulations, not inconsistent with law, for the government of his department; the conduct of its officers and clerks; the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

Acting under that authority the Postmaster-General has heretofore made various regulations distributing the duties of the different officers of the Government under his charge. The volume of regulations which I hold in my hand is that published in July, 1879. There was a prior edition of the regulations, published in 1873, I think, which contains substantially the same provision. The language is a little different. The differences, however, between the two are immaterial for the purposes of this case. As the transactions to which we shall invite your attention commenced in 1878, and extended down to 1880 and 1881, they would practically embrace both these series of regulations; but as there is no material difference between them it is unimportant here to read you both. In these regulations, on page 40, is the following :

THE OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL.

To this office is assigned the business of arranging the mail service of the United States, and placing the same under contract, embracing all correspondence and pro-

ceedings respecting the frequency of trips, mode of conveyance, and times of departures and arrivals on all the routes, the course of the mails between the different sections of the country, the points of mail distribution, and the regulations for the government of the domestic mail service of the United States. It prepares the advertisements for mail proposals, receives the bids, and has charge of the annual and miscellaneous mail lettings, and the adjustment and execution of the contracts. All applications for mail service or change of mail arrangements and for mail messengers should be sent to this office. All claims should be submitted to it for transportation service. From this office all postmasters at the end of the routes receive the statement of mail arrangements prescribed for the respective routes. It reports weekly to the auditor all contracts executed and all orders affecting the accounts for mail transportation; prepares the statistical exhibits of the mail service, and the reports to Congress of the mail lettings, giving a statement of each bid; also of the contracts made, the new service originated, the curtailments ordered, and the additional allowances granted during the year. The rates of pay for the transportation of the mails on railroad routes, according to the amount and character of the service, are adjusted by this office. It also directs the weighing of the mails on the same, and authorizes new service on railroad routes. The issuing of mail-lock and keys, mail-pouches, and sacks, and the supervision of the construction of mail-bag catchers is also in charge of this office. To it is attached the division of inspection, to which is assigned the duty of receiving and inspecting the monthly registers of arrivals and departures, reporting the performance of mail service; also special reports of failures or delinquencies on the part of mail contractors or their agents, and of noting such failures and delinquencies, and preparing cases of fines or deductions by reason thereof; of conducting the correspondence growing out of reports of failure or delinquencies in the transportation of the mails; of reporting to the Auditor of the Treasury for the Post-Office Department, at the close of each quarter, by certificate of inspection, the fact of performance or non-performance of contract or recognized mail service, noting therein such fines or deductions as may have been ordered; of authorizing the payment of all employes of the railway mail service; also the payment of such acting employes as may be employed by this office through the superintendent of railway mail service in cases of emergency, and of authorizing the Auditor to credit postmasters with sums paid by them for such temporary service; and such other duties as may be necessary to secure a faithful performance of the mail service. All complaints against mail contractors or their agents, relating to failures or other irregularities in the transportation of the mails, whether made by postmasters or others, should be promptly forwarded to the Second Assistant Postmaster-General marked "Division of Inspection."

Mr. Thomas J. Brady, one of the defendants, was Second Assistant Postmaster-General from, I think, the 23d day of July, 1876, down to some time in March or April, 1881, having been removed soon after the coming of General Garfield to the Presidency. As such he exercised the powers given under these statutes and this regulation which I have just read to you. Claiming to exercise powers under them he made orders, as the Government claims, by which part of the other defendants in these cases fraudulently profited to the extent of large sums of money, while other of the defendants were concerned in assisting Brady in carrying out the general scheme. The Government claims that these parties have been guilty of a conspiracy to defraud the United States by action in connection with the mail service and the Post-Office Department, which I shall state in some detail, and that therefore they are liable to be punished under the statute of the United States which declares in substance that if one or more persons shall conspire to defraud the United States in any manner, and if either one or more of them shall do any act in pursuance of that conspiracy then all are guilty. If they conspired together to defraud the United States in any manner whatever and any one did any act, then all who conspired are guilty.

Now, among the powers given to the Postmaster-General by statute, and which by the authority given for assignment he has transferred or delegated so far as he may to the Second Assistant Postmaster-General, is the following. I read from section 3965 of the Revised Statutes:

The Postmaster-General shall provide for carrying the mail on all post-roads estab-

lished by law as often as he, having due regard to productiveness and other circumstances, may think proper.

I ask you to bear in mind, gentlemen, the language of that section. You will notice that the only thing which is specified to be observed by the Postmaster-General in providing for carrying the mails is productiveness. He is to have "due regard to productiveness." He may consider other circumstances; but the legislators say that productiveness is the important element in the consideration, and that he must have due regard to that. That statute, I may say, has been upon the statute book of the United States, in substance, and, I think, in words, almost from the existence of the Government; certainly, as I remember, from the creation of the Post-Office Department.

The other provisions of the statute to which I wish to call your attention, are provisions with reference to advertisements. The statute declares by section 3941, as amended in the 20th volume of the Statutes at Large, page 356, as follows:

The Postmaster-General shall cause advertisements of all general mail-lettings of each State and Territory to be conspicuously posted in each post-office in the State and Territory embraced in said advertisement for at least sixty days before the time of such general letting; and no other advertisement of such letting shall be required. But this provision shall not apply to any other than general mail lettings.

Then, by section 3957, this provision is made:

Whenever, by reason of any error, omission, or other cause, any route which should properly be advertised for the regular letting is omitted, it shall be the duty of the Postmaster-General to advertise the same as soon as the error or omission shall be discovered, and the proposals for such route shall be opened as soon as possible after the other proposals in the same contract section; and the contract made under such supplementary advertisement shall run, as nearly as possible, from the beginning to the end of the regular contract term, and during the time necessarily lost by reason of such error, omission, or other cause, the Postmaster-General shall provide for the carrying of the mail on such route at as low rate as possible without advertising.

By section 3958 it is provided:

Whenever it becomes necessary to change the terms of an existing contract for carrying the mail otherwise than is provided—

In the two sections specified, to which I will directly call your attention—

notice thereof shall be given and proceedings had thereon the same as at the letting of the original contract.

Then, by section 3944 of the Revised Statutes, it is provided:

Proposals for carrying the mail shall be delivered sealed, and so kept until the bidding is closed, and shall then be opened and marked in the presence of the Postmaster-General and one of the assistant postmasters-general, or of two of the assistant postmasters-general, or of any other two officers of the department, to be designated by the Postmaster-General.

By section 3948 it is provided:

The Postmaster-General shall have recorded, in a book to be kept for that purpose, a true and faithful abstract of all proposals made to him for carrying the mail, giving the name of the party offering, the terms of the offer, the sum to be paid, and the time the contract is to continue; and he shall put on file and preserve the originals of all such proposals.

Then under section 3950 there is this provision:

No contract for carrying the mail shall be made with any person who has entered, or proposes to enter, into any combination to prevent the making of any bid for carrying the mail, or who has made any agreement, or given or performed, or promised to give or perform, any consideration whatever to induce any other person not to bid for any such contract; and if any person so offending is a contractor for carrying the mail his contract may be annulled.

Now, gentlemen, I have read you these provisions for the purpose of showing you the system of law under which the Post-Office Department exists and is bound to act, and the care which is taken in requiring that the carrying of the mail shall, as far as possible, be thrown open to public bidding after public advertising; as showing that not only is there provision for the general advertising, but provision for a case where a route has been omitted, or for any case where something has been done that ought not to be done. Then there is to be a supplemental advertisement, and the Postmaster-General has power to make only a temporary contract pending the maturing of that advertisement and the letting of the contract under it; and also these provisions which say the Government is determined, so far as statutes go, that there shall be free, open, and public bidding, by imposing penalties in case any bidder seeks in any manner to prevent any other person from bidding against him.

But, gentlemen, there are some other provisions of law bearing upon the same subject, and throwing light upon the intent of the statute. Section 3951 of the Revised Statutes, as amended in 1876 by the 19th Statutes at Large, page 129, says:

Whenever an accepted bidder shall fail to enter into contract, or a contractor on a mail route shall fail or refuse to perform the service on said route according to his contract, or when a new route shall be established, or—

Mark this, please—

new service required, or when from any other cause there shall not be a contractor legally bound or required to perform such service, the Postmaster-General may make a temporary contract for carrying the mail on such route, without advertising, for such period as may be necessary, not exceeding—

The statute which I have been reading says, “Not exceeding six months;” but the time has been extended to not in any case exceeding a year. “Until the service shall be commenced under a contract made according to law.” If new service is required, or if for any other reason an accepted bidder does not enter into his contract, or fails or refuses to perform service, then the power is given to the Postmaster-General to make a temporary contract, which, however, shall continue only for a year at the outside, and until service shall be commenced under a contract made according to law, and, as we claim, under a contract made after advertisement, and an opportunity for everybody to bid.

Then, following the matter along a little further, by sections 3943, 3956, and 3970, as amended in 1878, 20th Statutes at Large, page 61, we find a provision as to the circumstances under which contracts may be made without advertisement:

The Postmaster-General may enter into contracts for carrying the mail with railroad companies without advertising for bids therefor.

When from any cause it may become necessary to make a new contract for carrying the mails upon any water route between ports of the United States upon which mail service has been previously performed, the Postmaster-General may contract with the owner or master of any steamer for carrying the said mail upon said route without advertising.

There is also a provision for contracting with the masters or owners of vessels on new routes without advertising; but in such case the new service cannot be arranged for a longer period than a year.

Now, there we see the whole scheme carefully laid out. There must be advertisement and an opportunity for free, open, public bidding in every case where mails are required to be carried on behalf of the United States; and careful provisions are made in all these respects, to which I have called your attention, to meet the different contingencies that

may arise. These provisions have been expounded by the Supreme Court of the United States in a case decided in 1876, and reported in the 3d volume of Otto. Bearing in mind the origin of these prosecutions, the case has rather a significant name. It is the case of *Garfield against The United States*.

The object of the statute was to secure notice of the intended post-routes, of the service required, and the manner of its performance, that bidders might compete, that favoritism should be prevented, that efficiency and economy in the service should be obtained.

Now therefore it comes to this, gentlemen, that the statute requires every honest and efficient officer to advertise fully and to solicit bids for all the service required. He is bound under another provision of the law, as I recollect it, to inform himself as far as possible before advertising as to the service which is likely to be required. He is put in a position where he can inform himself. He has the experience of the past service which is to be replaced by the new service which is to be advertised for.

Mr. WILSON. I do not wish to interrupt you, but I will be glad to have a reference to the statute you mention.

Mr. BLISS. I will give it to you later on. Do you question that there is such a statute?

Mr. WILSON. I do not know. From your statement I should think it was a mistake.

Mr. BLISS. Perhaps so. But I think there is such a statute.

Now he is bound to advertise, and he is furnished with the means of informing himself as to what he shall advertise for. He has the experience of the past routes and the service on the routes about to be replaced and the service upon similar routes. He has the right to call upon the postmasters all along the routes, or in the country, to tell him and to advise him as to the nature of the service that is required. He has, moreover, placed at his control a corps of post-office inspectors, whose duty it is, under his orders, to go over the country and examine into the postal-service. I am bound to say that I do not believe there is another department of the Government which has in its employ so efficient a corps of men as the post-office inspectors with whom I have been thrown in connection. The Postmaster-General is bound to inform himself as to all the service required. He cannot, being convinced that three trips a week are required, advertise for one trip. He must advertise for it all. He must obey the law in good faith. He cannot advertise a route at a speed of two miles an hour when he understands or has reason to know that the public necessities require that the speed upon that route shall be four miles an hour.

I think it may fairly be said, gentlemen, that if an assistant postmaster-general having prepared an advertisement, claiming to advertise for all the service required, and having received bids under it, if before the service is actually commenced, somebody alleges that there ought to be faster service, or more service—I think it may fairly, under ordinary circumstances, be claimed either that the allegation of the necessity of more service is untrue, or that the assistant postmaster-general having the matter in charge, had not done his duty in ascertaining what should be advertised for.

Of course we understand that the assistant postmaster-general may be misinformed. Of course we understand that the condition of things may change. The condition of things cannot ordinarily change within any very short time after the advertisement. As fast as the western country grows, it does not grow so fast as to require any very great

change either before contracts made under the advertisement go into effect, or within any brief period after that.

Now, having advertised in this way for the service, the law comes in and makes another provision and says, under section 3949:

All contracts for carrying the mail shall be in the name of the United States, and shall be awarded to the lowest bidder tendering sufficient guarantees for faithful performance, without other reference to the mode of transportation than may be necessary to provide for the due celerity, certainty, and security thereof.

And here let me say, gentlemen, you hear a great deal of star-route prosecution and of star routes. It is in this section, which is a reenactment of an act passed in 1845, that that phraseology has its origin. The phrase was used as "celerity, certainty, and security." This statute made a change from a practice which prevailed before, authorizing regard to be had to the conveyances in which the mails were to be transported, &c., and it declared that the only element was "celerity, certainty, and security," and on the Post-Office records, when they came to designate the routes under this statute, they put three stars against them instead of writing out the words, as representing the words "celerity, certainty, and security." That is the origin of the phrase star routes, as I understand it.

The Postmaster-General is bound to award the contract to the lowest bidder tendering sufficient sureties. He is bound in advertising, as I have said, as I called your attention to it in reading the statute, to consider primarily, not exclusively, the productiveness of the route. Now, do not suppose, gentlemen, that we make any claim whatever that every mail route in the United States has got to pay its own expense. We all understand that that is not so. We all understand that in the western country the pioneers are certainly entitled to mail service, and until business grows and cities grow we all know that the mails over those routes cannot be transported for a sum which will be repaid by the postage collected from the mails transported over them. The pioneers of the West are entitled to their mail service. They are entitled to it to the extent that their needs fairly require. Their needs, as we claim, are not such as to require, under ordinary circumstances, the same rate of speed or the same frequency of trips as is required in the more thickly settled portions of the country.

Now, therefore, repeating for the moment, the officer is to examine carefully as to the needs of the locality, present and probable, during the period for which he advertises for contract. He is, in doing that, to consider primarily the productiveness of the route and to consider other circumstances, and then to advertise fully; that is for the full service, and then to let the contract to the lowest bidder. But, as I have said, there may be cases in which mistakes occur, cases in which even at the time of advertisement they honestly misconceive the amount of service required; cases where, as I have already said, the development of the country renders more service proper. Perhaps the discovery of a mine brings a large number of people to a particular locality, and of course additional service may then be required over a route which was before entirely insignificant. It may be that a railroad pushing into the Western country is brought to a new point, from which it communicates with other and important points, or should communicate, and a mail route there becomes important which was originally very unimportant. Of course the reverse may occur. The reverse does constantly occur. The progress of the country or the progress of the railroad renders a route which was for a time important very un-

important, or the abandonment of a mine renders a route which was important very unimportant.

Now, to meet this condition of things it is very clear that even with all these provisions for advertisement, for submitting to the lowest bidder, that there must be some provision made under which there can be some elasticity, some discretion lodged with some one. Now that fact has been recognized from the very earliest period of the postal service. I use the language "recognized," because it is a fact, gentlemen, that the provisions to which I am about to call your attention, and under the pretended authority of which most or all of the frauds to which I shall call your attention were perpetrated, do not in direct terms give to anybody any power. They are not provisions conferring a power upon anybody, but they are provisions recognizing the existence of the power and placing limitations upon its exercise. Those provisions are known as provisions for increasing the service and for expedition. Before, however, I read them, let me call your attention to one section in the Revised Statutes intended to meet the necessity, if the necessity shall arise, by a provision of this kind. It is in section 3951, as amended in 1876 :

In all cases of regular contracts hereafter made the contract may, in the discretion of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or other contractor shall be made by the Postmaster-General.

In other words, where a regular contract by its terms expires in four years, if the Postmaster-General finds it is important he may continue that contract for six months until he has an opportunity to make, under advertisement, a contract for the service required, and in the same way, under the clause which I think I have already read you, he is authorized to provide for new service under a temporary contract. The provisions, however, which are most important in this case, are these. They are the provisions to which I was referring as to increase of service and expedition as it is called, expedition meaning increase of speed.

Section 3960 of the Revised Statutes provides :

Compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service ; and when any such additional service is ordered the sum to be allowed therefor shall be expressed in the order and entered upon the books of the department, and no compensation shall be paid for any additional regular service rendered before the issuing of such order.

You will therefore perceive, gentlemen, that in that section, as I have said, there is no express power to do anything.

Compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service.

It simply says that you shall not give more than a certain limited sum for any additional service ; additional service meaning additional trips—additional trips per week.

The next section, 3961, is drawn upon the same principle, and yet it contains a little mathematics :

No extra allowance shall be made for any increase of expedition in carrying the mail, unless thereby the employment of additional stock and carriers is made necessary, and in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution.

You will see, therefore, that there is no power in anybody under that section to make any payment or allowance for increase of speed unless the increase renders necessary the employment of additional stock and

carriers. If it does render necessary the employment of additional stock and carriers, then the additional allowance is to bear no greater proportion to the additional stock and carriers than the compensation in the original contract bears to the stock and carriers originally employed in its execution. The last section, I ought to say, was amended in 1880 by a further limitation that the allowance for expedition should in no case exceed fifty per cent. You will see, in the progress of these cases, a good reason why Congress made that amendment. This provision of the law was first introduced into the statute in 1825. It appeared there in this form—the two present sections appeared there in this form :

No additional allowance shall be made by the Postmaster-General to the contractor or carrier of any mail on any route over and beyond the amount stipulated in the contract entered into for the transportation of the mail on such route, unless such additional service be required, and then no additional compensation shall be allowed to exceed the exact proportion of the original amount to the additional duties required.

These provisions to which I have just called your attention, supplement and carry out the intention of the law-makers by providing for every possible emergency with reference to the carrying of the mails, advertising where possible, giving the contract to the lowest bidder always, whether you advertise or whether you do not advertise, and then making temporary contracts only for so long as is necessary to make a contract under the law after advertisement. Then, if those provisions do not apply, do not meet an emergency which arises, then come in these provisions as to increase of service and increase of speed and resort is had to these.

Now we claim, gentlemen, that Mr. Brady, while Second Assistant Postmaster-General, habitually resorted to these provisions; that he made increases of service and increase of speed where there was no necessity for it; that he made it upon evidence utterly inadequate to satisfy any man who intended to be honest and fair; that he made it with extraordinary allowances, going up to the very limit of the amount authorized by the statute when there was no proper public cause for such a course. The statute requires that the additional allowance "shall not be in excess" of the cost of the new service substantially. Now, we all understand when we come to consider the question of additional service, that when a man has a contract to run a mail route once a week, and the Postmaster-General makes it three times a week it does not cost the contractor three times as much to make three trips a week, as it does to make one trip a week. There are a large portion of his expenses which are not trebled, many of them which, I apprehend we shall show you, are not increased at all. Others are increased only very moderately. Therefore, when the service of one trip a week is increased to three trips a week, it should be a very exceptional case, indeed I cannot imagine that there should be any case, where three times as much should be allowed, if the Postmaster-General in making the allowance lives up to the statute, and bears in mind that he can allow for the increased service only such sum as is proportionate to the cost of the original service. Now, the mail contractors recognize that constantly. These very defendants here recognize it in papers which will be placed before you—the most telling of papers. I have the originals here, but I can perhaps refer to them quicker by reference to this book that I hold in my hand.

One of the defendants here, Stephen W. Dorsey, the former United States Senator, having occasion to write to his agent in Oregon, to sublet a route of which he, or some one of these defendants had become the contractor, said he was *willing to pay*—

Mr. WILSON. [Interposing.] Your honor, I want to interpose an objection here now to the gentleman reading what he proposes to introduce in evidence in this case.

Mr. BLISS. I am not going to read what I propose to introduce.

Mr. WILSON. You are proposing to read from a letter which you say was written by Mr. Dorsey. [To the court.] He has no right to read those things now to the jury. At the time when this comes up, if it is ever offered in evidence, we have the right to object to it. I do not know what it is. We have a right to see it. We have a right to see what Mr. Dorsey wrote. I do not know what it is going to be but I make the point now that he has no right in stating this case to the jury to be reading to them that which he regards as testimony in this case. I do not know what it is. But before anything is read to that jury having relation to any conduct of these parties, anything professing to have been written by these parties, we have a right to see it and see whether or not it is germane to this case. And this is not the time to present it.

Mr. MERRICK. If your honor please, this might as well be settled definitely by a ruling of the court now, as there may be in the course of the opening of my learned brother, which will necessarily be elaborate, occasion for him to repeat what he is now doing. I think brother Wilson has probably laid down the law correctly within a limited degree. I do not know that the counsel has a right in the opening of a case to take an original and read from that original paper and state to the jury that that is evidence. But counsel in his opening must state to the jury all the evidence that he expects to adduce before them.

The COURT. I do not know that I should state it exactly in that form.

Mr. MERRICK. He ought to state as much as in his discretion——

The COURT. [Interposing.] He states the facts that he expects to prove, and how he expects to prove them.

Mr. WILSON. To that I have no objection.

Mr. MERRICK. Very well. That is, I think, the equivalent of what I said. He must state all the facts that he expects to prove, and how he expects to prove them, to use the phraseology of your honor. Now, he expects to prove that a certain party wrote a certain letter, and that in that letter he stated thus and so, the party who wrote it being one of the parties in the case, and his statements being competent.

The COURT. That I understand is not objected to.

Mr. WILSON. Yes——

Mr. MERRICK. [Interposing.] One moment. I have not got through with my statement. It is objected to in a certain aspect. To repeat, the counsel has a right to state that he expects to offer a certain letter from, say, Mr. Dorsey, and that in that letter Mr. Dorsey stated so and so. Now, if he can state that from memory, he can read from his notes the contents of that letter. He cannot offer the original and say, "This is the evidence now offered to you," but "I expect to prove that Mr. Dorsey wrote a letter in which Mr. Dorsey stated so and so." And when he comes to state the contents of the paper, he can state it either from memory or from memoranda.

Mr. WILSON. Now, if your honor please, my point is that he has no right to read you the letter itself or state its contents. Stating the contents is worse than reading the letter, because if he were a witness on the stand and undertook to testify, your honor would not allow him to state the contents of a letter. Your honor would require the letter itself to be read and presented to the jury. Now, when he comes to

make his statement to the jury, he is undertaking to state what Mr. Dorsey said in a letter. They have a right to state the facts they propose to prove. They have a right to state the kind of evidence by which they propose to prove those facts; but they have no right to give the substance of any letter, of any paper, to the jury in an opening statement, because we must have an opportunity to meet these things as they come.

Now, if your honor please, how would it look for me, when I come to state this case, if I could get hold of the papers that these gentlemen have in their possession, to commence and read to that jury all the petitions and the letters from Army officers, from General Sherman down, urging and imploring General Brady to do the very thing that Colonel Bliss is standing here in the presence of this jury and condemning, what would my friend say? He would say this is not the time for that.

Mr. BLISS. I should also say there are no such papers.

Mr. WILSON. You know there are such papers, plenty of them, and these records are full of them, and you won't keep them away from this jury, either.

The COURT. This is entirely out of order. I will decide this question now, and therefore I shall have to stop discussion of this sort.

Mr. MERRICK. I hope your honor will.

The COURT. In the opening statement the counsel has a right to state his case as he expects to make it out, and he has a right further to say by what proof he expects to make out his case, and the facts that he is engaged in laying before the jury. He has no right to read an original paper which has not of course been in evidence, nor has he the right to read a copy of an original paper. But he has a right to state every fact upon which he expects to rely, and the means of establishing that fact, and he may refer to a letter as a fact, or as a means of proving the fact which he is stating to the jury, but not to go into a statement of the substance of the letter, either by reading it or by reading a copy of it, or by reciting the substance of it from memory. That is as I understand the rule.

Mr. WILSON. I want to apologize to the court for a little vehemence which I exercised toward my friend, Colonel Bliss.

The COURT. Well, the court was a little vehement in arresting your argument, but I know that matters out of order had better be stopped before they go too far.

Mr. WILSON. I know it, your honor, and when Colonel Bliss said there were no such papers, I perhaps retorted a little more emphatically than I ought. I certainly did not intend any disrespect to the court.

Mr. MERRICK. That is, he has a right to prove certain facts; for instance, that the defendants made certain admissions.

The COURT. Yes.

Mr. MERRICK. And he expects to prove them by a letter of one of the defendants.

The COURT. Yes.

Mr. BLISS. I will say to your honor that that was all I intended.

The COURT. I supposed so.

Mr. BLISS. And I bore that fact in mind. Instead of referring to the original paper, I thought I might be transgressing the rule, and I simply referred to a statement, and I say that we expect to show to you, gentlemen of the jury, that when a service is increased one, two, three, or more times a week, the expense is not multiplied by the number of trips. We expect to show to you that this fact is recognized, not only by all mail contractors, but *recognized by these defendants themselves,*

and that one of the defendants, in directing the making of a contract through an agent, expressly provided that while a certain sum should be allowed for one trip, for instance, \$1,400, that when it became two trips there should be allowed only \$2,600, and when it became three trips there should be allowed only \$3,700, and when it became six trips there should be allowed only \$7,000, and for seven trips \$7,500. Therefore, in multiplying in the example I gave to you—

The COURT. I really think there is no difference in the views between the counsel on this question.

Mr. MERRICK. Therefore, as I said, brother Wilson stated the law correctly, though I do not think he understood it. He stated it right.

Mr. WILSON. Yes, I understood it.

Mr. BLISS. Mr. Wilson undoubtedly supposed that I was going to do something I ought not to do.

Mr. WILSON. It had all the ear-marks of it.

Mr. BLISS. All I have to say is that if in this respect, or in any respect, I shall seem to you to violate any rule of law or propriety I trust you will stop me at once. I do not mean to do so.

I expect to show to you, gentlemen of the jury, that one of these defendants, by letter, ridiculed the idea that when trips were doubled up the expense was doubled. Moreover, gentlemen, Congress has in one significant case shown its intention upon that subject. In 1857 they passed a statute authorizing the Postmaster-General to enter into a contract for carrying the mail overland from the Mississippi to California. That was prior, of course, to the Pacific Railroad being finished, and they used this language:

That the Postmaster-General be, and he is hereby, authorized to contract for the conveyance of the entire letter mail from such point on the Mississippi River as the contractors may select, to San Francisco, in the State of California, for six years, at a cost not exceeding \$300,000 per annum for semi-monthly, \$450,000 weekly, or \$600,000 for semi-weekly service, to be performed semi-monthly, weekly, or semi-weekly, at the option of the Postmaster General.

Therefore while they were to make in the one case eight trips a month for \$600,000 they authorized to be paid for two trips a month only \$300,000.

Mr. WILSON. Please give me that reference. I did not get it.

Mr. BLISS. I will give you the section of the statute. It is the 10th section of the act of March 3, 1857, found in the 11th Statutes at Large, page 190.

Now, we expect to show you, gentlemen, that Mr. Brady, in exercising the power impliedly given him, under the section to which I have referred, for increased service, habitually, almost uniformly, disregarded this principle, and that he increased the pay to the extreme limit authorized by the letter of the law; that even if we accept therefore in those cases the fact that an increase of service was proper to the extent of the increased amount of service which Mr. Brady ordered we still say that the amount ordered and paid for was excessive, so excessive that no officer performing the duties of his office in good faith would have made any such allowance, and you will bear in mind that when Mr. Brady made an allowance for extra service or for expedition to a contractor it was practically an order to pay that money out of the Treasury of the United States.

Now, in the same way as to this increase of expedition, you will perceive that there comes in a little different element, but of the same nature. In the first place there shall be no allowance made for expedition, unless that expedition necessitates the employment of

additional stock and carriers. There is a fact that must be ascertained. We expect to show to you that in at least one case, and I think more, Mr. Brady made orders allowing large sums for expedition where there were no additional stock and carriers required to perform, it. We expect to show you by the evidence of the persons who were performing the service before the expedition, and by the evidence of persons, frequently the same, who performed the service after the expedition, that they performed it with precisely the same number of stock and carriers; and in some cases we expect to show you, gentlemen, that the subcontractor went on innocently performing the service, and the first knowledge that he ever had that Mr. Brady had ordered the speed increased that Mr. Brady was paying from the Treasury to these defendants, or some of them, large sums of money for the service which he, the subcontractor, was supposed to be performing, was when the inspectors of the Post-Office Department, after it had been in operation two long years—I mean in operation to the extent of taking the money from the Treasury—went upon the route after this investigation was ordered, and for the first time communicated to the mail carrier the fact that there had been any expedition ordered. And yet, all the time he had been going on all the same with the same service, the same number of horses, the same rate of speed as before, and had been doing it with the same amount of stock, and the same number of carriers as before. And yet here is the statute, which says that no extra allowance shall be made for increase of expedition in carrying the mail, unless thereby the employment of additional stock and carriers is necessary; it is a limitation upon the power of Mr. Brady and of everybody else. We say it was not observed, and if they say they thought it was to be observed then, I think, we will show to you beyond all question that Mr. Brady never thought it was to have been observed; that he never took any proper means to inform himself upon the subject, of what the amount of service and what the number of men and carriers were at the time, with reference to it being performed at the old rate of speed, and that he never took any means to be informed of what was required for the additional service.

But the statute goes further:

And in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution.

Now, that, again, you will bear in mind, gentlemen, is a limitation. It is not that you shall allow that. It is a limit beyond which you shall not go. This section originated in the section which I called to your attention just now, of the act of 1825. The language of both these sections being in that incorporated together. And let me say here, that I am referring to a report made by a gentleman formerly connected with this case, in which he has brought together a large amount of facts gathered by himself and various persons engaged in the investigation, and has stated them in a consecutive and connected form, and I therefore refer to it rather than to the original statutes. The original statute of 1825 combined in one section the effect of these two sections. It says:

That no additional allowance shall be made by the Postmaster-General to the contractor or carrier of any mail, on any route, over and beyond the amount stipulated in the contract entered into for the transportation of the mail on such route, unless additional service shall be required; and then no additional compensation shall be allowed to exceed the exact proportion of the original amount to the additional duties required.

That section remained in force down to 1835, and then a question was

raised at one time, owing to some misconduct in the Post-Office Department or in connection with carrying the mails, which it is unnecessary for me to go into, a sort of star-route fraud, a question was raised there apparently as to whether this which I have read to you from the act of 1825 applied not only to increase of service but applied also to increase of speed. It was considered by committees, both of the House and Senate, and the committees had occasion to express their opinion on the subject, and the Postmaster-General had occasion to express his opinion. The Postmaster-General says :

For expediting the mail, in point of time, there can be no rule for determining the *pro rata*. The actual increase of expense, agreeably to an ancient provision made in contracts, is the rule which governs. It is frequently done at a less rate ; but when that full rate is demanded, some evidence of the increased expense is required before the allowance is made.

That is the Postmaster-General in 1835, stating the then practice of the Department. A committee of the House considered that question, and they affirm the view of the Postmaster-General.

All that is necessary is to ascertain the expense of the original service and what will be the expense of the additional service ; the rule would then be : As the amount of the expense of the original service is to the compensation therefor, so is the amount of the expense of the additional service to the *pro rata* additional allowances.

And therefore in 1835, or in 1836, I believe, the law was amended so as to get rid of that doubt as to the provision of the statute of 1825, and took substantially the present form.

I want to impress upon you again, gentlemen, that these are sections of limitation laying down the bounds beyond which they shall not go. They assume that the officer who will act under them will be an honest officer ; that he will act justly ; that he will recognize known facts ; that he will give to the contractor enough to pay him adequately for the service he performs, and that he will protect the interests of the Government. I think we shall be able to show that Mr. Brady wholly failed in his duty in this respect ; that he not only made orders for expedition, and payment in consequence of it, where no expedition was really obtained, not only where it was not necessary, but, assuming it to be necessary, that he made order after order where the amount he allowed for the service was grossly in excess of any sum which could properly be allowed. He not infrequently states in his order that the amount he allows is less than *pro rata*. But I shall show you directly that the statement is deceptive ; that it was based upon an assumption of facts which did not exist, but which Mr. Brady chose to assume did exist.

And that brings me to another and an extraordinary practice in connection with this business of expedition which, if not introduced by Mr. Brady, was certainly first practiced by him to any considerable extent, and that was, with reference to the evidence upon which he would base his order, making an order for increase of speed and making an allowance therefor. If he had been a careful, honest officer, acting in good faith, when there came to him an application for an increase of speed, what would he have done ? After having ascertained that there were good grounds for such an increase of speed to some extent, what would he have done in ascertaining how much should be allowed therefor ? Acting in good faith he certainly would not have done what Mr. Brady did. He left it in substance to the contractor into whose pocket all the money was to go, to say how much money the United States should pay him for the increased speed. And that was done in a very plausible way, and yet under a guide which—not to introduce slang into this

argument—which is best described by the boy's remark as being very thin.

We shall show you before we close, I think, that the demand for expedition, as well as the demand for increase of service, is ordinarily worked up if not created by the contractors; that it is they who send out petitions in form to be signed; that it is they who send their agents, who are told to go to A, B, and C to write letters, and give them forms in which petitions and letters are to be worded. It is they who direct their agents to get articles into the local press. It is they who direct their agents to cause letters to be written to Senators and Representatives, seeking to divide them properly in all cases, as far as possible, between the two parties, and get them to write letters asking that there should be increase of service and increase of expedition. Now, bearing in mind that fact, let me call your attention to this regulation which Mr. Brady uniformly applied in all cases of increase of speed, and so far as the records show, and so far as we have been able to ascertain, he accepted it as the only and conclusive evidence as to how much he should pay the contractor when he ordered an increase of expedition. This is limited to increase of expedition. The provision is paragraph 620 of the regulations of 1879. It first appears in the regulations of that year; is not found in the regulations of 1873, and was evolved from the brain of some one in the intermediate time and properly evolved as an element in the consideration. Its language is this:

When it becomes necessary to increase the speed on any route, the contractor will be required to state, under oath, the number of horses and men required to perform the service according to contract schedule, and the number required to perform it with the proposed increase of speed.

Now, it is all very right that the contractor should be required to make that statement of how many men and horses he actually uses at the time, and how many he believes will be used under the increased rate. The provision is broader than the statute, and to that extent is in violation of the statute. The statute authorizes to be considered only the additional stock and carriers. The regulations look to horses and men, including everybody who may be supposed to be employed in connection with the business besides the carriers. Now a contractor is required to make that statement under a regulation. That was all well enough. But, gentlemen of the jury, I think I shall satisfy you that Mr. Brady accepted that affidavit always and uniformly without inquiry or investigation as the final and conclusive statement; that if the contractor said to him that it took two men and four horses to carry the service at the then rate, and that in his opinion—or stating that it would so do, which I suppose would be his opinion—to carry it at the increased rate it would take six men and twenty horses, that Mr. Brady accepted both of those statements as conclusive without inquiry, and applied the rule of three directly to it, and said, as contractor's statement of the existing number of men and horses is to the present price paid, so is the number which the contractor says will be needed to the price which we should pay, and then ordered the payment of that price. I think we shall show you that Mr. Brady uniformly applied that rule, and applied no other. That he had no other evidence of how many men and horses were in use at the time the order for expedition was made, and that he had the judgment of nobody else except the contractor, expressly and solely interested, as to the number that would be required. And yet when Mr. Brady found it desirable for any reason, he was very ready to disregard his own rule, and we shall show you that in a very considerable number of the cases included in this indictment the af-

fidavit that was made under that section was made by a person who was not the contractor at all, and that acting upon that affidavit Mr. Brady ordered expedition, and ordered it to the amount claimed under such oath. For instance, on the route from Pueblo to Rosita, No. 38134, we expect to show you that John R. Miner was the contractor; that Mr. John W. Dorsey, by some right, claim or other, made the affidavit for expedition; that on route 38140, from Trinidad to Madison, John R. Miner was in like manner contractor, and Mr. John W. Dorsey was on the record as subcontractor, not performing any service, and he made the affidavit on which expedition was ordered. Then on route 35015, from Vermillion to Sioux Falls, Mr. Harvey M. Vaile was subcontractor, and he made the affidavit; and the fact that the affidavit was not made in accordance with the regulation was in this case expressly called to the attention of Mr. Brady, and Mr. Brady paid no attention to it. On route 38113, from Rawlins to White River, Mr. C. B. Perkins, the subcontractor, made the affidavit. There are other similar cases, which will appear in the course of the evidence; so that Mr. Brady, when he wanted so to do, paid no attention to this regulation as to the affidavit of the contractor requiring him to state under oath—disregarded it; but he always, without exception, observed the statement in the oath of the party who made it as to the amount that he or his associates should be entitled to receive under the order Mr. Brady was expected to make.

Now, gentlemen of the jury, would any business man do his business in that way? Would any business man make a contract with any one else to do something for him where it is agreed he shall pay the extra cost of doing it? Would he in such case accept as final and conclusive, without inquiry or dispute, the statement of that party as to how much that extra cost was?

Mr. WILSON. Colonel Bliss, may I interrupt you one moment? I have not the slightest objection to Colonel Bliss arguing this case. I simply want to call the attention of the court to it, so that if I should answer this argument I may not be called to order for doing so. I have not the slightest objection to his arguing it.

Mr. BLISS. I do not propose to argue the case. Perhaps I have passed a little beyond the limits in my statement of the fact. I desire to impress upon the jury the fact that we propose to show that Mr. Brady proceeded in this manner, and that it was a manner which we believe no business man would proceed upon in doing his own business, and a manner in which no officer of the Government had any right to proceed. Now, what should Mr. Brady have done; not to argue, what under this section should be done?

The COURT. I think, Mr. Bliss, that you have the right to point out in what respect the evidence you expect to introduce bears upon the case; what point it tends to elucidate. It seems to me that you have not digressed much in that respect so far.

Mr. WILSON. I am not objecting to it, your honor.

Mr. BLISS. The difficulty, I will state, your honor, is that the facts are arguments. They are arguments that come with crushing weight to these gentlemen, and I presume they do not like it.

Mr. WILSON. I am gratified very much indeed.

Mr. BLISS. The fact is that Mr. Brady, or any other public officer, when he was going to consider expedition—when he had made up his mind he was going to order expedition—was bound, under this statute, to ascertain two things. First, he was bound to ascertain how many men and carriers were required to perform the service as it was per-

formed at that time. Now that is a fact capable of easy ascertainment. If he would send simply to the postmasters on the route; if he would send one of his inspectors there; if he would send and inquire of the subcontractors, the men whom he finds performing the service, it is perfectly capable of being ascertained how many men and horses were then being employed. We shall place before you, on route after route here, the men who were doing the service at the times of expedition, and we shall show to you that the statements made in the affidavits of the number of men and horses then engaged in performing the service were utterly untrue. And they were untrue always, gentlemen, in this respect. In the application of the rule of three, which the statute prescribes, the Government could be defrauded in two ways: First, by understating the number of men and animals employed in performing the then existing service, because then the relation between the number of men and horses employed and the amount then paid would be larger than it would if it was correctly stated. Therefore the Government could be defrauded, first, by an incorrect statement of the number of men and horses then employed. It could be defrauded in the second place by an incorrect statement or estimate of men and horses which would be employed in performing the service on the proposed expedited schedule.

Now as to the first fact, as I have said, it was not difficult of ascertainment. It was not difficult to ascertain from the men carrying the mail at that time what number of men and animals they were using. It was not necessary to take this statement of the contractor, or, when it suited him, of some subcontractor who was not himself the carrier, but who was a man here in Washington, who never owned a horse, never had any experience in the mail service, never performed an hour's mail service in his life, never was on the route, who stated as a fact that a certain number of men and animals were then being required. It was not necessary to rely upon that. It was very easy to send to the locality and find out. And you will find that in every case the affidavit of the contractor or subcontractor upon that subject is the only evidence upon file in the department answering those questions, and it is ordinarily a brief form stating the number of men and animals necessary to carry the mail on a specified route on the present schedule with so many trips per week; that the then existing trips required so many men and so many animals, and that the number necessary on a revised schedule of time, of so many trips a week, is so many and so many, and on little papers just as big as this [exhibiting a paper] and no bigger, containing no more, the statement and the oath and everything being there.

We shall show you cases, gentlemen of the jury, where a service—I wish to keep within the limit—let at \$2,350 a year was carried up to \$67,650 a year.

Mr. WILSON. Is that the Tongue River route?

Mr. BLISS. That is the Tongue River route, sir. Of course, part of the increase that I refer to was an increase of trips and not an increase of speed. But you will see how an increase of speed and the expense caused by the increase of speed comes in in connection with the increase of trips. Because if you have one trip a week at \$5,000 and then if you shall increase—and we shall show you that it was ordinarily done in this way—the same order at the same time making an increase and three trips it would be \$15,000 a year; and then he would direct an expedition, an increase of speed on the whole three trips and

carry it up to fifty or sixty thousand dollars, as the case may be. Therefore, while in point of fact and technically a portion of the allowance in that case and in others is for increase of trips, it really is so interlocked with the question of the allowance for increase of speed that it is all governed, and the affidavit will show that the contractors understand it is all governed by their own statement of the number of animals and men then used and the number of men and animals that they state would be used.

Now, as to the other question, gentlemen, of how many men and animals will be required on the proposed schedule. There it is a matter of opinion. It is not a question of fact absolutely. It is a matter of judgment upon which honest men may fairly differ. It is a matter of opinion upon which, above all things, the opinion of the person who is to perform the service, who is to get the money, is entitled to very little weight, and is to be looked at with very great caution. When a case of expedition comes up, and the Postmaster-General, or the assistant postmaster-general, is seeking to inform himself as to how many horses and carriers are likely to be required under the proposed increased service, what will he do, if he is honest? Would he not, in the first place—and we shall show you that that was the practice up to a very recent time—get from the contractor a statement showing all the details, then go to other persons engaged in the mail service, possibly, and naturally to rivals, and get from them a statement of what, in their opinion, would be required; go to the men who are actually performing the service, who are daily or weekly traversing the route, find out from them what, in their opinion, would be the increased number of men and animals necessary, and from that arrive at a conclusion, bearing in mind that the contractor is likely to be biased, and bearing in mind his infirmity of human judgment, but at the same time getting at the facts as best he can.

Now, we shall show you that down to as late as January, 1876 (Mr. Brady became assistant postmaster-general on the 23d of July, 1876), instead of this brief oath of the contractor stating that so many men and animals are now required, and so many men and animals will be required when the contractor desired an increase of expedition, or an increase of speed, he was called upon to make a long, detailed, and accurate statement of carrying the mail, stating how many horses he employed, what they gave per month for feed, what for shoeing, how many drivers were employed, what was paid per month for wages, what for board, how many stock tenders, the expense for ferriage and tolls, the expense for soap and buckets, and so forth, the amount of capital invested by him in the service, how it was invested, how much in horses and how much in wagons and how much in harness, what a proper allowance was for interest, what a proper allowance was for wear and tear—all that is applicable to the then existing schedule; and that then when they came to the proposed new schedule requiring them to state in detail how many four-horse teams they would have, and what allowance for feed for them, what it would cost for shoeing, how many drivers and what allowance for stock-tenders, what allowance for wages and board, what allowance for tolls and ferriage on the increased rate, and the increased amount of capital invested in the business, and all that, they were required to state. Now, that is something that looks like business. It certainly gives some elements of fact from which a judgment can be formed as to how many horses would be required. It shows what the contractor bases his estimate upon, and gives the Postmaster-General, or assistant postmaster-general, the means of detect-

ing errors in it, and of finding out whether he is unduly biased, is interested, and overstates it.

Mr. WILSON. Allow me to ask, do you state that that is a regulation?

Mr. BLISS. I have not said that it was a regulation.

Mr. WILSON. What is it?

Mr. BLISS. It is an affidavit, a form that was used, and similar forms were used in a large portion of the cases of expedition prior to Mr. Brady's time. I do not know that when the system of having this oath, merely, came into operation. I do not know, gentlemen, for this reason. This whole business of expedition is a new business. I shall have occasion to mention the numbers a little more accurately, but I am under the impression I have it here. In the year ending June, 1872, there were but six cases of expedition. In the years ending June, 1875 and 1876, two years, there were but seven cases of expedition. Mr. Brady became Second Assistant Postmaster-General on the 23d of July, 1877, and in the remainder of that year he made sixteen cases of expedition, and, not content with making sixteen cases of expedition, in that same year he made additional allowances for trips, or additional trips, or additional service on two hundred and fifty other routes, and the result was——

Mr. WILSON. [Interposing and addressing the court.] Is that competent.

Mr. BLISS. We are going to show it, sir.

Mr. WILSON. I do not know whether you are or not.

Mr. BLISS. I am going to offer to show it, and I think I shall be permitted to show it.

Mr. WILSON. Well, go ahead.

Mr. BLISS. I am going to offer to show, and I believe the court will permit me to show, gentleman of the jury, that within the fiscal year after Mr. Brady came into office he ordered expedition in sixteen cases and that he, thereby, while the contract rate in those routes was \$184,544 carried the amount allowed by the Government up to \$382,490.40 adding \$197,946.16 to the expense which, as you will perceive was more than one hundred per cent. and bear in mind, gentlemen, these figures are for a year, and when you make an expedition under a contract which has four years to run, if you make it in the first year of its running, the order takes from the Treasury four times as much, always provided the revel of corruption which prevailed in the Post-Office Department under Mr. Brady continues. In the same way, on those two hundred and fifty routes, the original rate of pay was \$604,336.90. Mr. Brady added to that amount \$1,090,620.92, and all in the fiscal year that he first came into office when, as you will see as we go along, he was simply getting warm in his seat and applying his "prentice hand." Now, I need not tell you that no business man would abandon this form which I have shown you as having been used in a large number of cases immediately preceding Brady's administration, and substitute this brief form, merely the statement of the contractor. This would not have been done if the officer honestly wanted to perform his duties. We shall show you, gentlemen, that some clerk in the department who had an idea that things were to be done fairly went to Mr. Brady and called his attention to the business, and came as near being snubbed as one gentleman can be by another. We shall show you, as I have said, that these affidavits which Brady accepted were certainly false; false in the statement of the existing number of horses and men; false in the representation and statement of the number that were in fact required

under the expedited schedule. They were so false in the last particular that I think you will be of the opinion that no man could have honestly believed, even though he claim to have been misled, that the statement of the number that would be required under the increased schedule was a correct one. Some of these affidavits on their face could not be correct. I think we shall show you the number of men and horses stated as then being necessary to carry the mails on one route (bearing in mind the number of trips which were then required and bearing in mind the length of the route) were on their face as inadequate as if anybody should tell you that the mail could be carried overland from here to the Mississippi River once a day with ten horses.

Then again, gentlemen of the jury, we shall show you this: We shall show you that these affidavits, which were the basis of proposed action, were constantly altered in the most barefaced manner, and came before him with the evidence of alteration—figures boldly stricken out, or amounts boldly stricken out, and the erasures always in the operative part, to wit, the statement of the numbers. We shall show you in at least one case that the affidavit was sworn to in blank. We shall show you by the affidavits in a good many more a condition of things from which we shall ask you to infer, using your own eyes, that the affidavits were sworn to in blank; that they were filled up according as the emergency or the greed of the parties concerned dictated. We shall show you that in one case one of these defendants sent an affidavit—and we shall produce to you his letter—sent an affidavit in blank, with directions that it should be sworn to “just as it is.” And yet such are the affidavits upon the basis of which Mr. Brady was, in the brief period in which he was in that office, enabled to take from the Treasury of the United States, if we estimate the time during which his orders were to run, over \$5,000,000.

Again, Mr. Brady constantly made allowance, based upon these affidavits, in excess of the amount that should have been allowed, even judging by the evidence that was contained in the files of his own office, judging by the evidence that he incorporated into the very orders which he made. There was, gentlemen of the jury, a law passed in 1878, known as the subcontract law. It was passed because up to that time only contractors had been recognized by the Government. They made subcontracts with the parties who were engaged in actually carrying the mail, and the contractors got the money and did not pay the subcontractors. Thereupon Congress intervened and passed a law authorizing the subcontractor to place his contract on file, and then when the time for payment came he was first to be paid. If he was to receive less than the aggregate amount the Government was to pay to the contractor, then the contractor got only the surplus. We shall show you that in certain cases Mr. Brady having claimed to decide that expedition was proper, then fixed the amount to be allowed for it, and said, “Here, you Mr. Miner, or Mr. Dorsey, or Mr. Peck, are carrying this mail on this route at three miles an hour for \$10,000 a year. I will put it up to four miles an hour and base my action upon your affidavit, which says so much is necessary, and I will give you \$18,000.” And yet, gentlemen of the jury, he had at that time on file in many of these cases in his office the contract in which the men had expressly provided to this effect: “I am getting \$10,000. I will pay the subcontractor \$8,000, and sitting here in Washington doing nothing I will get away with \$2,000 clear profit”—profit, with the exception of what had to be expended in carrying on the business here. But the contract went further, and said if the speed

should be increased, then the subcontractor should get forty, forty-five, fifty, or sixty per cent., or whatever it might be, of the increased amount thereof, and the contractor would get the difference. Now, there was before Mr. Brady when he made these orders for expedition, the proof that all that was necessary to get the mail carried at an increased rate of speed was a certain definite amount to be paid to the subcontractor; and still, with that evidence before him, that of the money to be allowed for expedition, where \$20,000 was proposed to be paid, \$10,000 was to go to the man who was to perform the expedition, and \$10,000 was to go into the pockets of the contractor here in Washington, Mr. Brady deliberately, in order after order, directed this excessive amount of expedition, basing it entirely upon the affidavit of the contractor. In certain cases he said, "allow the contractor for expedition \$20,000, and of that amount give the subcontractor" (who was to do the service) "\$10,000." He put it squarely into his order, and he will ask you, I presume, to believe that that course was the course of an honest, painstaking, public officer, acting in good faith, and protecting the interest of the Government.

Moreover, gentlemen of the jury, I call your attention to the fact that the only element which the law specifies absolutely to be considered with reference to the amount of service, is the question of productiveness.

Having due regard to productiveness—

As the statute says. It specifies productiveness and does not specify anything else, although it gives him a right to refer to other circumstances.

We shall show you that in a large number of cases of expedition the amount of the productiveness of the route was absurdly small.

For instance, we shall show you that on the route from Garland to Parrott City, No. 38145, the amount paid for mail-carrying was brought up to \$31,343.76, and yet the average receipts of all the offices upon that route for the three years during which this continued were \$194.96; \$31,343 was paid for carrying the mail over that route, not a through route, but simply a local route; and the productiveness of the route was \$194.96.

On route 40113, from Tres Alamos to Clifton, the amount paid under Mr. Brady's orders was \$27,913.39.

Mr. MERRICK. What was the original contract price?

Mr. BLISS. I have not got it on this schedule. I can give it to you. The original contract price was \$1,568. It was carried up under Mr. Brady's order to \$27,913.39, and the average revenue of the route during three years was \$568.65.

On route No. 40104, from Mineral Park to Pioche, the contract price was \$2,982. Under Mr. Brady's orders it was carried up to \$52,033.38. The average revenues of that route were \$670.68 a year. All the offices on the route were supplied by other mail routes, and I have credited to this route the entire revenues, and yet the service cost \$52,000, and the Government received \$670. Will they tell you that that is having "due regard to productiveness?" The year after the order carrying it up to that sum was made the revenues of the office, instead of increasing, ran down from \$761 to \$597. That is having "due regard to productiveness," is it?

On route 38156, from Silverton to Parrott City, the original contract price was \$1,488. Under Mr. Brady's order it was run up to \$16,512.28. Here, for the first time in the revenue, we get into four figures. The average revenue there was \$2,979.49.

On route No. 38140, from Trinidad to Madison, which was originally let at \$338, it was carried up under Mr. Brady's orders to \$4,290. The average revenue for three years was \$141.90.

The COURT. A year?

Mr. BLISS. A year; the average revenue a year taking the average of the three years of Mr. Brady's administration.

On route No. 38135, from Saint Charles to Greenhorn, which was let at \$548, under Mr. Brady's orders was carried up to \$43,015.30 a year. The average income of all the offices on that route during those three years was \$102.72 a year.

Now, let us go to Oregon. Route No. 44140, from Eugene City to Bridge Creek, was let at \$2,468 a year. Under Mr. Brady's order it was carried up to \$21,466.89. The average yearly income of the route was \$178.88.

Let us go to Utah. Route 41119, from Toquerville to Adairville, was let at \$1,168 a year. By Mr. Brady's order it was carried up to \$20,894.22. The annual income there was \$1,241.

Route No. 38156 was let at \$1,488, and carried up to \$19,062.61. The annual income was \$1,092.72.

I have given you there, gentlemen, some specimens of the cases, selecting not the cases where the amounts allowed were the largest, because in one of those cases, the route from Bismarck to Tongue River, there were absolutely no intermediate points, and Bismarck was the leading town of Dakota. You could not take all of the income of that office, and the income of the other terminus, and credit it to this route, where it will appear before you that there was carried over the route an average mail of less than a pound a day. (I think that is the route.) But I have picked those out just as they come, without any special selection; and we shall show you not only those, but others. We shall ask you, then, to consider whether due regard was had to productiveness.

We have searched in vain, gentlemen, to find anybody on any one of these routes of whom Mr. Brady ever caused any inquiry to be made, either as to the number of men and animals which were then being used, or as to their opinion of what number of men and animals would be required. I cannot say, of course, that some such inquiry was not made. I can say that there is no evidence of record in the Post-Office Department that any such inquiry was made, and I can say that inquiry has been made by us of the people who were then, and all the way down since have been performing the service, and we cannot find a single instance of any inquiry of that sort.

We expect to show you, gentlemen, numerous cases where there was and where there could be no reasonable, no plausible claim that there was any just reason for an increase of service or expedition, and yet that one or both of them were ordered by the brief, autocratic words indorsed upon the back of a paper: "Do this. Brady." Thereupon, the route which was let at \$1,400 a year was carried up under Mr. Brady's order and made to cost the Government \$52,000. We shall show you cases, gentlemen, where large sums were taken from the public Treasury under Mr. Brady's order for expedition, where, in point of fact—and I ask your attention to this—both before and after Mr. Brady's order for expedition the mail was being carried in less than the expedited time; where, it being a stage route, the contractors preferred or were compelled for the purposes of the express and passenger traffic to run the stages, in which they were to carry the mail from end to end of *the route* in less time than Mr. Brady ordered them to do it. Mr. Brady

in one case actually paid thousands of dollars for expedition to a contractor when the contractor was, at the time he made the order, carrying the mail during a large portion of the year in thirty-one hours less than the time Mr. Brady paid him for carrying it. He was doing that at the time the order was made, and yet "Do this, Brady," takes thousands of dollars from the Treasury for that contractor. That route to which I refer is No. 46247, from Redding to Alturas. The original letting was \$5,980. At that rate the Government was getting its mail carried at the fastest speed it ever got it carried. The time on that route was the same from beginning to end of the contract, and under Mr. Brady's manipulation that \$5,980 was carried up to \$55,894.66. Trips were added to account for part of that; but the great portion of that increase, I think \$34,500, was for expedition; and yet expedition was not obtained, because before the order was made for that payment from the outset of the service the mail had been carried in the summer in thirty-one hours less than the expedited time, and in the winter in considerable less time, though not so much less.

Yet there was an order for payment for expedition where expedition was not obtained. How easy to go to the locality, to telegraph to the locality, to ask the postmaster in what time the mail was being carried; but, gentlemen, it was not necessary to do that. Go to the records of his own department. There is the return of the postmaster at each end of the route, showing the hours of the departure and the arrival of the mails. With that evidence in his possession Mr. Brady made these orders, taking from the Government, I think, thirty-odd thousand dollars a year.

We shall show you, gentlemen, cases where nothing was gained by the expedition; where the mail was started from a given place to connect with a mail at another place, and when it got to its terminus it had to wait. Under the schedule of Mr. Brady himself—in one or two cases under schedules that he made the same week when he made the order for expedition the mail had to lay over as long as the time he pretended to save in its transfer from terminus to terminus, and for which he paid thousands of dollars. We shall show you, gentlemen, cases where he ordered the mail to be carried at a speed which was utterly impracticable. When he sent his schedule to the postmasters directing them to fix up a schedule, and not allow more than fifty hours over the route, the postmasters, one and all, returned the schedule with the indorsement that it was impossible to carry the mail over that route in that time. The schedule was sent back to the postmasters one, two, and three times, and they each persisted all the time in telling him that the thing could not be done, and yet he insisted upon its being done. I have no right to argue to you as to why he insisted upon its being done; but you will find this: that in those cases there was a subcontractor who was bound to perform the service if it was expedited, either without any increased pay or with an increase of pay of, say, fifty per cent.; and this subcontractor was bound to pay all the fines and deductions in case the service was not performed. Therefore, when Mr. Brady insisted upon the performance of an impossible schedule the result was that the subcontractor who did the work was entitled to fifty per cent. of the amount allowed by the Government, the other fifty per cent. going into the pockets of the contractor and his associates; but the subcontractor had got to pay from that fifty per cent. out of his own pocket all the fines and deductions consequent upon his failure to comply with an impracticable schedule; and sometimes you will find the unfortunate subcontractor, after struggling to perform the service within the time

which he and all the postmasters had represented was impracticable, coming to the end of the quarter and finding that not only was there nothing due him, but he had been fined so much that he was actually in debt to the Government for the privilege of trying for three months to comply with the schedule which could not be complied with.

We shall show you case after case where, both before and after the order for expedition or increased trips was made, the postmasters on the route remonstrated, and represented that there was no earthly cause for it; that the people did not want it; that there was no mail to carry, and that it was a fraud upon the Government to pay the money out in that way. We shall show you one case where a patriotic postmaster suggested to Mr. Brady—probably being misled by the name “General” Brady—that if the Government had any money to spend in that way it had better, instead, be given to the widow of the “noble General Custer,” as he said. But in spite of that Mr. Brady went on and gave the money to the contractors.

We shall show you one case, gentlemen of the jury, where the service was commenced on the 1st of July, 1878, where the contractors promptly came in with affidavits and proved that the route was wholly unnecessary, that there were no inhabitants on it, that there was no road, that there was not even a trail, and that there therefore was no mail, and that as between the terminal points the mail service was better carried in another direction. They made their affidavits to all these facts and they asked that the route should be discontinued.

Mr. MERRICK. The subcontractors, you mean.

Mr. BLISS. No, the contractors. I am referring to the route from Bismarck to Tongue River, in which John R. Miner was the contractor. They came in and they lugged delegates in Congress into the matter. They got one delegate on both sides of the question. He certified in the month of July that the route was not good for anything, and ought to be discontinued, and in the month of September, I think it was, he said the service was so great that it ought to be expedited. It is a literal fact, gentlemen of the jury, that there was a question for some weeks before this service commenced as to whether the routes should not be abandoned, the contractor having taken the route at \$2,350 to carry the mail 250 miles once a week both ways at a speed of three miles an hour. Having obviously got a bad bargain, the contractor became convinced that the Government did not need any such service, and reported that there was no mail, that there were no trails, and that there were no post-offices; but he did admit that there were some inhabitants, for he represented that the Indians were in possession of the route, that the carrier had been shot at, and if they wanted to get a mail across the route they must have a company of soldiers to go with it. And yet within a very brief period afterwards, as early as the fourth of October, I think it was, following, that route was carried up to three times a week. Had been let at \$2,350. With no people except the Indians, in a very short time that route had become in the eyes of the contractor and Mr. Brady so important a route that the Government was ordered to pay \$70,000 a year for carrying the mail over it.

Now, gentlemen of the jury, we shall show you also this condition of things: That the contractors before there appeared in the department anywhere any suggestion that a route was to be expedited or any service to be increased held out as inducements to parties to make contracts with them the fact that the service would be increased and that the speed would be expedited, and when that was done a contract which seemed a losing contract and a subcontract which seemed losing and

inadequate would become at once profitable both to the contractor and to the subcontractor.

But, gentlemen, we shall show you other things hardly less extraordinary, I think. We shall show you this condition of things: That having taken the contract on route number 38134, from Pueblo to Rosita, and agreeing to perform service at \$388 a year, the patriotic contractor, Mr. Miner, determined to treat the Government well, and while getting only \$388 from the Government he made a subcontract with somebody else to carry the mail, and who did in point of fact carry the mail, for \$700; who received from Mr. Miner \$700 a year for doing what the Government only paid him \$388 for. But Mr. Miner's patriotism and pocket did not long hold out at that rate. He promptly made his arrangement by which this route which he took at \$388 and which cost him \$700 to run was, by the kind interference of Mr. Brady, increased so that he got \$7,760 on this route, and the result was that in a brief period a route which had lost him three or four hundred dollars a year was transformed into a route which was a gain for his pocket of several thousand dollars. Gentlemen, when I say as I go along that these were the gains of the contractors you will bear in mind that I assume—what I do not think my friends on the other side are going to deny—that Mr. Miner had no other expenses in connection with the performance of his mail service; that he had no expenses in getting this \$7,760, and therefore all over what he paid for carrying the mail was clear profit. If in that respect I make a wrong assumption then I do less than justice to Mr. Miner.

On route 38156, from Silverton to Parrott City, Mr. John W. Dorsey received \$1,488 for carrying the mail, and made a contract with a subcontractor in which he undertook to pay him \$2,280 for carrying the mail. Now that was a very liberal thing for a gentleman who, up to the time that he went into the mail contracting business had been a small mechanic in a small town in Vermont, to go down into Southern Colorado and to go into the business of helping people to get their mails carried and helping the Government to pay for it. There was a liberality about it that we do not often see in these days. He was a Yankee, and I being a Yankee, could not quite understand that sort of thing. It seemed to me that he was not a fair representative of the Yankee race. So I went to work and looked into the records and I found that when he was getting from the Government \$1,488, and paying out \$2,280, he promptly transformed that by Brady's order into a condition of things whereby instead of \$1,488 he was getting \$15,741.

Well, up in Oregon there was a route, number 44140, from Eugene City to Bridge Creek, of which Mr. Peck was contractor. There Mr. Peck was not quite so liberal to the inhabitants of Oregon and to the Government. He did not pay out of his own pocket quite so much difference. He got from the Government \$2,468, and he paid, or agreed to pay, \$2,700; but there came along a period of reimbursement when his friend Brady made an order in which he got from the Government instead of \$2,468 the sum of \$19,135.96, saving the Government 4 cents on the last dollar, gentlemen.

Now take the route from Mineral Park to Pioche. In that case and in the next case the contractors, I think, are entitled to the premium for liberality. That route was let at \$2,982 a year.

Mr. WILSON. What is the number?

Mr. BLISS. Number 40104. The subcontractor was agreed to be paid \$4,700 by Mr. John W. Dorsey who got from the Government \$2,982, having made a journey to Arizona and having made his arrangements.

with the subcontractor and having told him that the route would be increased within a very short time. (There were various contracts made, but they all looked to the question of increase of pay to come in some way.) He made a contract with the subcontractor by which on an increase the subcontractor who was to do all the service was to get \$12,600 on this route which started at \$2,982, and the contractor, Mr. Dorsey, was to get \$9,700 net; and after he got away from Arizona and on his way back he was so astonished at his liberality to the Government in paying some \$1,800 more than he got originally and also with his liberality to the contractor in letting him get \$12,000 for carrying the mail while he, Dorsey, was getting \$9,700 for doing nothing, that he sat down at a mail station on the way back and wrote to his subcontractor that this was "the most liberal trade he had made since he started out."

On route No. 38113, from White River to Rawlins, the contractor got from the Government \$1,700. He liberally arranged to pay the subcontractor \$2,500, a net loss of \$800, but he did not allow that condition of affairs to remain long. He soon arranged for expedition under which expedition the contractor got \$8,600 for doing nothing, and the subcontractor got \$5,100 for doing the service; and before long the aggregate amount that the Government was paying for that service, which started at \$1,700 a year, was \$30,281.25.

Moreover, gentlemen of the jury, we shall show you that there were certain routes on which the contractors did not begin the service on the 1st of July, as they were required to do, to the great inconvenience of the people and the Government. They were called upon in the ordinary circular sent to them to perform the service at once, and they were threatened to be declared failing contractors if they did not perform the service. Now, the power to declare a man a failing contractor is given—

Mr. WILSON. [Interposing.] Allow me to interrupt you in your own behalf. I would suggest to your honor that as Colonel Bliss has been talking two hours and a half, it would be proper to take a recess of twenty or thirty minutes.

Mr. BLISS. I would be glad to have a recess at some time, and this will answer as well as any other.

Mr. MERRICK. In addition to that I suggest to your honor that there might be an understanding that if nothing unexpected arises to prevent it, we have a recess every day at half-past twelve.

The COURT. Whilst the gentlemen are addressing the jury the court will take a recess of half an hour about this time of the day, a little earlier or a little later, as may suit their convenience. It is hardly possible for the gentlemen to continue from ten o'clock until three without intermission.

At this point (12 o'clock and 30 minutes p. m.) the court took a recess of half an hour.

AFTER RECESS.

After recess Mr. Bliss resumed his argument, as follows:

At the time of the intermission, gentlemen of the jury, I had stated to you in somewhat general terms the striking features of some of the cases which we shall endeavor to present to you, and I believe that in *stating them* I confined myself strictly within the limits of the evidence

which we shall be able to produce. In other words, that I did not state anything which I do not believe, after a good deal of personal examination, I shall be able to establish by evidence that cannot be controverted.

I was about to say at the adjournment that there were certain routes upon which the service did not commence on the 1st of July; at the time when it ought to have commenced, and that the contractors were notified to begin and did not so do; and that it continued for some weeks or months after that time before any service was commenced. Now, under the law it was the power, if not the duty, of Mr. Brady, as Second Assistant Postmaster-General, in view of the circumstances, to declare the contract forfeited and to hold the sureties responsible. The section to which I refer is section 3951 of the Revised Statutes as amended in 1876 by the 19th Statutes at Large, page 129, which provides that:

If any bidder whose bid has been accepted, and who has entered into a contract to perform the service according to his proposal, and in pursuance of his contract has entered upon the performance of the service to the satisfaction of the Postmaster-General, shall subsequently fail or refuse to perform the service according to his contract, the Postmaster-General shall proceed to declare him a failing contractor.

The provision, in general terms, is that, having declared a person a failing contractor, the service is offered to the next highest bidder under no obligation on his part to take it, but with a right on his part to take it, the sureties of the failing contractor being made liable for any difference which the Government has to pay. The effect of declaring a man who is engaged in the mail service a failing contractor is to debar him from having any future business with the department so long as he remains so declared. Moreover, if a man is a failing contractor on one route and is performing service upon another, the money accruing to him from one route will be retained by the Government to meet the loss caused upon the other. As a result, therefore, the being declared a failing contractor is a matter which involves a good deal of loss to anybody engaged in that business, and is a penalty which they seek as far as possible to avoid. On many of these routes, as I say, they did not commence service. Mr. Brady gave them formal printed notice or written notice that they must commence, but still they did not commence.

To all appearances, we think we shall show you from the facts that they recognized that they had taken the service at less than it would cost them to perform, and therefore they would be at a loss. Their magnanimity, of which I gave you some instances, did not extend to all the routes, and they apparently debated the matter quietly and decided not to put the service on, so that they were under no expense other than the expense which was apparently incurred by sending agents along the line of the routes where the service had not commenced to get up petitions in favor of increased service and of increased speed. The result was in the various cases that it is a little difficult to say whether the notification from the locality that the contractors had finally commenced service preceded Mr. Brady's order that more trips and more speed should be exercised and more money paid, or whether the order preceded the knowledge in Washington of the commencement of the service. At any rate, the acts were merely coincident, and Mr. Brady, during two or three or more months, allowed these parties not to perform the service, and left the matter in confusion, with the postmasters arranging for the service as far as they could, at increased rates, and all that, as we believe, with the intention to wait until the contractors got

ready in the manufacture of public opinion to make a plausible case to support Mr. Brady's order to put more money into their pockets.

In this connection there are some extraordinary instances. Mr. Turner's relations to this conspiracy were apparently this: Mr. Turner was the corresponding clerk in charge of the correspondence and papers from all of the States concerned in the routes mentioned in this indictment, except, I think, two. As such clerk it was his duty on the receipt of papers to brief them on the back, or to put them into envelopes, which are known as jackets, opening at the end ordinarily, and to put upon the outside of these jackets, or on the back of these papers, a correct description of their contents. As this word "jacket" will occur constantly, I will explain to you what it is. Here is one. [Exhibiting a jacket to the jury.] It is an envelope opened at the end, in which the papers are put, and upon the outside of which there should be found a correct statement of the contents.

It was Turner's duty to brief each paper, to brief it fairly, and so as to convey to anybody who looked at it a fair impression of its contents. We think we shall be able to show you that Mr. Turner so failed in that duty, failed so constantly, and failed in such an extraordinary manner, failed at critical moments, and so distorted the contents of the papers in briefing them that you cannot believe he did it carelessly or ignorantly. We think we shall be able to show you that this was so done; at any rate we shall seek to have you infer from the facts which we shall produce that it was done with the idea of having the papers as they were on the files show on the outside a good case for expedition or increase of service, assuming that the parties would not under ordinary circumstances in the thousands of papers filed almost daily in the Post-Office Department, examine them to see whether the brief was correct or not; and that the Postmaster-General, where the papers passed or might pass to his personal knowledge and under his personal eye, would look at the brief and not go further.

Mr. Turner played in that respect what may seem in a certain view an insignificant part in this combination, but at the same time an essential one. It would not have done for Mr. Brady to have made some of the orders that he did, if on the jackets on which he made the orders, the correct contents of the papers had been indorsed. It would not have done for Mr. Brady to make an order reducing the service to forty four hours upon a route if it had been alleged that it was done upon the basis of petitions which were among the papers and which asked for a reduction of service only to eighty-four hours. But, if Mr. Turner could conveniently happen to place upon the back of these jackets stating the contents of the papers the fact that they were petitions asking for forty-five hours, then on the face of the record everything was regular. So, if a prominent person, General Sherman, if you please, recommended that there be an increase of service of two or three trips a week that would not be a good basis for Mr. Brady to make an order that the speed should be increased from eighty-four hours to fifty hours or whatever the case might be; but if there is a convenient indorsement made upon the jackets that there is a recommendation by General Sherman and other officers so and so, mixing the thing up, it makes a pretty fair record on which you can base an order for increase of service. We shall show you some extraordinary specimens of Mr. Turner's manipulation in this respect. I refer to it now a little out of the ordinary course, because I happen to have in mind two of Mr. Turner's extraordinary indorsements which relate to these cases to which I am going to call your attention in which the service was

not commenced at the time it should have been commenced. In one of the cases there was a company of troops at Camp McDermott, I think. The army officers combined and wrote an indignant letter in which they said "We have not had any mails for thirty-five days. Why don't we get them? If you can't get the mails to us get them to a point where we can send our own soldiers or somebody out to get them. The roads are open, passengers come, expressage comes, but no mails come. Can't you do something for us?" Mr. Turner ingeniously put that paper into a jacket with other papers and indorsed it as representing a recommendation of the officers from Camp McDermott for further mail service, while in fact they were simply complaining that they were not getting the mails the Government was paying for. Upon the basis of that and other papers, Mr. Brady ordered that there be additional trips, and I think a little expedition besides. They were simply complaining that they did not get what they were entitled to, and in a certain sense that was a complaint that they wanted further mail service; but Mr. Turner put it into a jacket and mixed it up with other papers as a basis for further money to go out of the Treasury. In another case the postmaster at a particular place on one of these routes wrote in substance: "The Indian war renders service on this line a matter of the utmost importance," and was very indignant because the contractor had not been made to commence the service. Mr. Turner briefed that letter on the outside, "The postmaster reports that it is impossible to carry the mail on account of Indian depredations in the country through which the route passes." There are two specimens of Mr. Turner's facility at indorsement. Indorsement has got a great many people into difficulties financially and otherwise; and I think we will show you that indorsement will get Mr. Turner into a good deal of difficulty.

Now, in these cases to which I have referred, and there are several of them, before any service had commenced, the contractor went to work getting up petitions for expedition, and when he was getting up his petition he had to make this extraordinary and facile oath which was to be the sole voucher, the sole passport which would enable Brady to give him the "open sesame" to the Treasury of the Government. Therefore in making the affidavit he had to make a statement, and Brady had to pass upon a statement which he knew was untrue. He swore at that time that to perform the service under the existing schedule it took so many men and so many horses, and yet in point of fact at the time the oath was taken there had not been a day's or an hour's service performed, and Brady knew that there had not been. The records of the department showed his calling upon the contractor to perform the service, and his threatening if he did not, he would declare him a failing contractor, and also that he carefully took pains not to declare him so. Expedition was based upon an oath which bore on its face conclusive evidence of its falsity, appearing to Mr. Brady and everybody connected with the papers of the department; yet Mr. Brady goes on and makes an order or orders taking large sums of money from the Treasury with such a basis.

Going along briefly on the different lines of fraud that were committed upon the Government we find this condition of things. The section which I have read, says expressly:

Compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service; and when any such additional service is ordered, the sum to be allowed therefor shall be expressed in the order, and entered upon the books of the department, and no compensation shall be paid for any additional regular service rendered before the issuing of such order.

And yet, in a very considerable number of cases, Mr. Brady, in open and direct violation of this provision of law, makes an order, for instance; in one case, dates it on the 25th of February, in a given year, and says, "Allow the contractor at the rate of a certain additional amount per annum, from the first day of January preceding."

I have referred heretofore to a collection made by a gentleman formerly connected with these cases. While I have not verified the statement, I believe it to be correct, and I think it will appear that Mr. Brady made in the years 1877 and 1878 five of these antedated orders; that in 1876 and 1877, he made twenty-four of these antedated orders, and that in the fiscal years 1878, 1879, and 1880 he made forty-four, being, in all, seventy-three of these antedated orders. But, gentlemen, it is right for me to say to you that I do not understand that all of these increases—not a majority—are included in this indictment. I merely mention it as showing you what Brady's course of procedure was when the law came in his way.

We shall show you in one case, gentlemen, a transaction in which a mail route having been laid out and established, to go from one point to another, it turned out to be over a mountain, where it was impossible to go in some portions of the year, and therefore the route was extended around three sides of a square. In doing that it overlapped an existing route. One route was to be traveled over one day in a week; the other route every day in the week; therefore there were twenty-five or thirty miles where on one day in the week there was double service, if any. Before the route was changed to go around, of course it was proper enough. That was from Ouray to Los Pinos. After it was changed there was this double service. The postmaster assumed that there was a change, and that the mail once a week was put onto a route where there was a daily mail, and that the other route was dropped. They failed, therefore, to report any service upon this once-a-week route. They were called upon by Mr. Brady to know why they had not reported service upon that route. Thereupon, one of the postmasters sat down and wrote a careful letter to Mr. Brady, calling his attention to the whole transaction; and yet for months, and I think, over a year after that time, Mr. Brady allowed that condition of things to go on, and the contractor on that thirty-five miles of road to be paid twice over for one service.

He performed the service only upon one of the routes technically, though he went over the same ground. And not only that, but here is this remarkable condition of things that we shall show you: The postmasters at the termini of the route were required every month to send mail bills to the department, which should state the amount of service, the hours each day, and everything of that kind. They were to send a mail bill to the Post-Office Department, and they were to keep copies of it in their own office. What do we find? We find that these postmasters did send, as they said, their mail bills to Washington, stating that no service was performed upon that route, all being done and paid for upon the other. They kept their retained copies in their office, and we shall show you those retained copies. While every other mail bill that these parties forwarded can be found to-day on the files of the Post-Office Department, the mail bills which they sent stating that there was no service upon that route have all disappeared. We only know it by the accident of going to the post-office itself and finding the retained copies there, and then questioning the postmasters to see whether they did their duty, and they say they did. In some way or other that evidence, which was conclusive that the service should not be paid for,

failed to remain in the Post-Office Department. They are the only mail bills forwarded by these postmasters which have, apparently, disappeared. In that case you will understand that the mail was carried by the same man on the same wagon and the contractor was getting double pay upon the same route.

There is another case where there was a similar condition of things, a route having been changed so as to overlap another route. Thereupon they did make an order discontinuing the service for fifty odd miles, I think, where it overlapped, so as to leave only one route. The same person was carrying the mail under both of those contracts. Now, in the post-office laws, or in the post-office practice, there is a clause in the contracts that when the service is discontinued, as a sudden discontinuance may involve a loss to the contractor, they allow him a month's extra pay. In this particular case, when they overlapped the routes, and the same contractor was carrying both routes, and therefore there could not be any loss to the contractor, though they did not go on with the double payment, they gave the contractor for one month double pay, allowing him a month's extra pay.

Mr. WILSON. What was the amount in that case?

Mr. BLISS. I cannot tell you. I have not a memorandum here. I can say this, you need not be anxious about it. We do not want you to pay it back, because we have recouped it from some of the other contracts. Since it has investigated the matter, the Government, has gotten square on that particular steal.

Mr. WILSON. If it had been a large amount I suppose you would have remembered it.

Mr. BLISS. I do not know whether large or small. If Mr. Brady was a party to the stealing of ten cents from the Government, he ought to be punished just as much as if he was a party to the stealing of \$10,000 from the Government.

Mr. WILSON. I agree with you.

Mr. BLISS. The amount does not measure the morality of the conduct of a public officer I trust in this court or this community.

Mr. WILSON. I agree with you.

Mr. BLISS. Now another case was that when a new post-office was added, an order was promptly made allowing the contractor an increase on the ground that the distance was thereby increased; and yet in point of fact the post-office was directly upon the route, and the distance was not increased one rod from the road that had always been gone over by the contractor. And though originally increase by allowing only twelve miles of distance for an alleged increase and giving him \$100 or \$200 a year for that—that does not suit them. It seems different from brother Wilson's idea. But when you go on top of that and make expedition with this mathematical ratio in which this rule of three operates, you will find a case where an addition of twelve miles cost the Government originally I think \$200; but applying the expedition rule the Government lost \$1,490 a year by the nominal addition of twelve miles for going to a post-office by the door of which the contractor had always gone since he commenced carrying the mail.

Yet on the other hand a post-office was changed and moved a few miles, and the distance was reduced, and no allowance was made. We shall show you cases where no attention was paid to that; where on the same route an additional payment was made for an alleged increase of distance, but when a distance was diminished no deduction was made on that account.

I shall show you this, gentlemen: An expedition is ordered on a

given route, to commence on a certain day, say, on the 1st day of August. As the result of that expedition there is added to the amount of money taken from the Treasury, ten or twenty thousand dollars. And yet when that order was made, the terminal post-office on the route had been abolished more than a month previously, and before the expedition took effect. That is to say, that before the 1st of August Mr. Brady directed that twelve miles should be taken off the distance, but that one month's extra pay should be allowed to the contractor in consequence of the loss inflicted upon him by the reduction of distance, but that the twelve miles should be reckoned on the expedited pay under which the service had not yet commenced, and never did commence on those twelve miles. We shall show you cases, gentlemen, where the people in the vicinity asked for a mail communication from their place to a railroad station six or eight miles off, and where on the nominal basis of that petition Mr. Brady bent, crooked, an existing mail route entirely out of its proper direction for the purpose of taking in a post-office or a mail route where the citizens did not want it to come; where they could not get their service half as quick as on the other one, and the increased expedition, &c., cost the Government, I think, about \$2,000 a year for a service which could have been made in a shorter time and more to the satisfaction of the citizens for a couple of hundred dollars, but it would not have benefited the contractor.

We shall show you, gentlemen, at least one case where the petitioners asked an increase of service on a portion of the route, and gave reasons for it confined to that portion of the route, and yet Mr. Brady took that petition and made that a basis for ordering a large increase over the entire route, being something more than double the distance for which, even under any circumstances, the petition asked for.

In short, gentlemen of the jury, if there was any kind of defrauding of the Government which could be done in connection with the mail service which was not done for the benefit of the contractors, I am bound to say that I think from the evidence we shall present to you you will see that the failure to do anything further must have been due to a want of an inventive power and not to a want of will, and that you must believe that the inventive power of the parties concerned was very well developed.

Bear in mind the necessity of advertising under the law. Bear in mind the provision that where there was any new service required or any omission in the advertisement there were provisions for a temporary contract and for a new advertisement. We shall show you, gentlemen of the jury, that in at least one case, and I think others, Mr. Brady made an order increasing the service before the time for the original service commenced, and in that way gave to the favored contractor the advantage of having the additional trip with the requisite pay, which I think was *pro rata* for that entirely without competition, and gave him that advantage over all the other bidders, this being done before the service commenced, and right in the face of what the Supreme Court of the United States says is the intention of the law.

We shall show you, gentlemen, this condition of things in one case, that for over a year expedition was ordered and paid for. This was not the case where I told you earlier the mail contractor first learned of the expedition being ordered by the information that the inspectors of the Post-Office Department gave him after the investigation commenced; but here is another case where no expedition was had until over a year after the service was ordered, and yet it was paid for. On that route *we shall show you, gentlemen, the very ingenious way in which a por-*

tion of the fraud was perpetrated. The route was quite a long one; two hundred miles long, I think. At the terminal post-offices there would be made up a separate mail-pouch intended to go to a post-office near at hand at each end of the route. The carriers were directed in so many words that they must always leave the terminal point on time; that they must always leave this first post-office to return on time, and to satisfy the postmasters that they brought a mail they must always take a mail there; and they were told if they would do that the middle of the route would take care of itself, and therefore these mail-carriers started out from each terminal office, only twenty miles from the next post-office, and took back from there the pouch which they had carried out, thereby taking into the terminal office a mail, and the contractor got the credit of having performed the service over the entire route and the Government lost the money.

And let me say here that the case I am going to refer to is not the only case that will appear where there is a good deal in the records to indicate that at some time in these transactions Mr. Brady and these other parties had a falling out in their views of what the interests of the Government and themselves required; had a temporary disagreement. However that may be, we shall show you this: that on one route, on the 22d of the month, Mr. Brady made an order reciting that it appeared by the mail-bills there was very little mail on the route, and he struck out at one fell blow all the increase of trips and all the expedition that he had theretofore made, and his increase had been from the original contract price of \$2,982 to \$98,292.43—

Mr. WILSON. [Interposing.] To what route do you refer?

Mr. BLISS. I am referring to the Mineral Park and Pioche route, and on the 22d of the month. That inasmuch as it appeared from the mail bills that there was very little mail matter on the route the whole thing was put back to its original principles, and this was all struck off. And yet, on the 28th day of the month, six days afterward, he restored, as I recollect, somewhere about one-half of the amount, having in the mean time, I assume, come to the conclusion either that it was not necessary to have any mail on an expedited route, or that in six days, somehow or other, the mail had been greatly increased. That information as to the amount of mail matter was conveyed to Mr. Brady as the result of a very singular error on the part of the postmaster. The mail bills were introduced as a new feature, and they were intended to have the postmaster specify how many bags went each day over the route, and when mail bills were introduced on the Mineral Park and Pioche route it never once entered the honest heads of the postmasters that anybody ever supposed there was more than one mail-bag went over the route; and they said "it cannot be that they mean that we shall put on our mail bills the number of bags; it must mean that we must put on the number of the letters," and so they counted all the letters in detail, and the result was, gentlemen of the jury, that in twenty-nine days twenty-one letters went over that route. And thus that fact came to Mr. Brady's notice. There was one of the twenty-nine days in which there were five letters, and that was the maximum; and in eighteen days there was no letter whatever, and on the other days one, and so forth. When that fact came to Mr. Brady's notice, by these bills stupidly made by the postmasters out there, who seemed to have been honestly stupid or stupidly honest, in a spasm of disgust with either Miner or Dorsey, he made an order cutting off the whole \$98,000 of expedition and service; but, in some way or other, in six days he persuaded himself that he

ought to put back about half of that amount, and he promptly put it back.

On the Bismarck and Fort Keogh route, No. 35051, we shall show you that for a very long time no expedition was made, though it was paid for, and that to-day there is due to the Government for money wrongfully paid to these contractors not less on a single six months than twelve thousand and odd dollars, for expedition which they did not perform. And that was the road, gentlemen, which was so beset by the Indians, and so useless, and the route which ought to be abolished, and which in two months was run up in the way I told you. And there is another thing in connection with that route, it occurs to me, we shall show you, and it is a fact that is of a little significance. The entire pay on the route for the whole four years would not have amounted, under the original pay, to but \$9,500. To perform the service as it was called for on that route once a week there were required stations at which horses, or the horse, could be changed about once in thirty-five miles. As it was, as the petition said, a trackless prairie the stations had to be built, and a man was employed to go out and build them. He was made by these contractors to build those stations once in every seventeen miles, and when he asked why that was so was told that the route would be expedited and then they should want these other stations. And for a very considerable time, until it was expedited, they did not use their other stations. They used the stations only thirty-five miles apart. He was not only told that, but they actually spent in building the stations upon that route two-thirds of the amount of their entire mail contract for four years. They invested that with the idea obviously of doing the service well; they invested two-thirds of their four years' earnings in building the stations, and they were rewarded by having their \$2,350 increased to \$67,660. And upon that route, while this contractor, whom we shall place before you as a gentleman who is to-day a very large if not one of the largest contractors in the western country, was building the stations one of these defendants asked him when he got out about a hundred and odd miles on the route to take his gang of twenty or thirty hands who were at work for him and have them sign a petition representing that about twenty or thirty miles north of the line there was a settlement that ought to have a mail service, and therefore petitioning to have the spur put on there for the benefit of these contractors when there was not a human being, or a shed, or a hut, or anything of the kind there, and when none of these men who were to be asked to sign the petition had ever been within thirty miles of the place.

What I have said hitherto relates chiefly to the mode in which expedition was granted, and to the amount of allowances made for it, and to the mode in which increased service was granted and the amount allowed for it, assuming that there had been shown a just cause for expedition or increase of service. But let me for a moment call your attention to the evidence that we expect to present to you as to the basis of information on which Mr. Brady decided that there should be an increase of service or of speed.

There were usually, though not always, petitions alleged to be the petitions of people along the line, very generally letters of members of Congress, or of Senators, transmitting the petition, or a letter recommending it, and not infrequently wherever there was an Army tent anywhere near the route there would be apt to be some recommendations from the officers there.

Now, obviously the scheme of the law intended that service should be increased and speed increased only when the public good required

it. And it meant the public good, not only as it came home to the views of the people along the route, bearing in mind the service which they had and their own views of the service which they ought to have, but bearing in mind also that, inasmuch as on all these routes the expense of any expedition or increase of service was necessarily to be borne by the people not along the route, for none of these routes paid their way, but it was the duty of Mr. Brady when he received applications of this kind to consider whether there was such a condition of things shown, such a public necessity, that should authorize him to tax the rest of the country, to tax you and me, for furnishing a further mail service to the people along a route in Wyoming, or Colorado, or Nevada, or anywhere west of the Mississippi, for all of these expeditions, were, as I remember, in the States and Territories west of the Mississippi. It was assumed, I think, in the scheme of the law that an honest official acting in good faith would remember how prone people are to honestly overestimate the claims of themselves or of their locality, and not to think of the burden that might be imposed upon people in other localities. It was his duty also to remember how easy it is to get signers to petitions. That thing has passed into a proverb. I think in this locality it may be considered almost as proverbial that it is easy to get the signatures of members of Congress. However that may be with the people along the route, the members of Congress from there should necessarily be regarded by the Assistant Postmaster-General, when this application for increase comes to them, as advocates arguing their views, their side of the case. Mr. Brady stood in the position of a judge whose duty it was to hear the claims of all portions of the country. Now, therefore, under those circumstances, it was Mr. Brady's duty, when petitions or papers came to him recommending expedition or increase of service, to scan them carefully, to be satisfied as to the necessity and the propriety of what was asked. He had his postmasters along the routes to tell him whether increase of service or expedition was needed. He had his topographer, a special officer, with various machinery to ascertain the geography of the whole region of country. He had his post-office inspectors to send out over the route to see whether there was a call for increase of service or speed. He had the records of his own department to see whether the routes were productive or not. He was bound to look into all these. He was bound to do more. He was bound to have some evidence that the people who signed the petition existed; that they lived on the route; that they signed the petition, lived on the route or were interested in the service; that they signed the petition in the form that it was when it was presented to him. And yet we shall show you that, in his eagerness to make orders for the benefit of these contractors, he accepted anything that was designated as a petition. papers interlined, papers where the important and operative parts of them were written over the erasures, papers which were drawn to ask an increase of trips and where there is interlined or added, in an entirely different handwriting, a petition for an increase of speed. In one case, the Kearney to Kent route, there was a petition sent to a party to be circulated for increase of trips. It was signed generally along the route. The particular petition that was sent by the contractors to the parties to circulate they were told to use and send back. A bottle of ink got upset upon the petition that was sent, and therefore one of these parties rewrote it and got all the signatures to it which were the signatures of parties along that route asking an increase of service and saying *nothing about increase of speed*. We shall

put before you, gentlemen, the persons who circulated that petition, the person who drew it, the person who forwarded it to Washington, and they will tell you all that there was not in that petition at that time any application or any words about an increase of speed. And yet when that petition is found on the files of the Post-Office Department, it appears that the words "increase to thirteen hours," or something equivalent to that, are inserted at the end of a paragraph in a handwriting as different from that of the petition as my handwriting is from good-looking chirography. It was obvious to the eye of everybody that there had been a change. The change can have occurred in but one of two places. There is one gentleman through whose hands that petition went, with whom I have not yet communicated. I do not believe that he made the alteration. We are going to invite him at the proper time to appear upon the stand and tell us whether he made the alteration. The petition was sent to one of the Senators from Nebraska, and was by him forwarded to the Post-Office Department. When we find it on file in the Post-Office Department, it is an altered petition with those words, "thirteen hours" interlined, and, as I believe, it did not have them in when Senator Saunders sent it to the Post-Office Department. They got in after it got in the Post-Office Department, having got in in an entirely different handwriting, which, bear in mind, I am uncharitable enough to believe would not have been a different handwriting if the original had not been injured by the ink, and so a new one is written by somebody else—I think we can show whose it is. Then Mr. Brady took that petition which was never drawn for increase of service and made it the basis of expedition, adding \$2,200 to the original contract for \$868. That is the route, if I remember right, where the carrier did not know there had been any expedition until we told him of it.

Now, Mr. Brady accepted petitions in that way, with no inquiry, and made them the basis of orders taking these sums of money out of the Treasury; but we shall show you numerous other petitions. We shall show you, gentlemen of the jury, in one case, on one and the same day, that there were filed in the Post-Office Department two petitions as the basis of expedition on two several routes in which every name on these petitions is identical, in which there were about fifty or sixty names. I think you will be satisfied by the mere inspection that the fifty or sixty names were written by not over four or five people.

Mr. MERRICK. Not over four or five hands.

Mr. BLISS. I should have said four or five hands, there being written fifty or sixty names, those petitions being filed on that day by the same petitioners for expedition on different routes. We shall show you that the entire operative portion of the petitions, to wit, the statement of what they wanted in the way of increase of trips and increase of speed is in both of them written over an obvious erasure under which you can see the fact, not only that it did not apply to that route; but that it applied to a different Territory or State, being drawn for a different Territory or State than that in which the route was located; and we shall show you also, if I mistake not—I say if I mistake not, because the witness upon that point I only know of; he is on his way here—that there is not one of the names which purport to be signed which is the name of any man who ever lived on either of the routes as to which they were used to take money out of the Treasury of the United States.

Mr. WILSON. What are those routes?

Mr. BLISS. One is the Mineral Park and Pioche route, No. 40104

I think the other is not in the indictment. I think it is the Mineral Park and Ehrenberg route.

Mr. WILSON. You are talking about something outside of the case now.

Mr. BLISS. I am talking, sir, about two petitions in just the way I mentioned, filed on the same day. It is no defense for Mr. Brady to say that "When I made the order upon the Mineral Park and Pioche route on a petition filed with me on a given day, I made an order on Ehrenberg and Mineral Park route on the same petition identically on the same day." It is no defense for him to say that that cannot be referred to because the statute of limitations happens to have run against any overt act on the Mineral Park and Ehrenberg route and has not run on the Mineral Park and Pioche route.

Mr. WILSON. Who has said anything about the statute of limitations?

Mr. BLISS. Why nobody. You said something about my referring to something that was not in the indictment.

Mr. WILSON. I only referred to it as something I never heard of.

Mr. BLISS. There is a great deal in this case, Mr. Wilson, that you have never heard of. On such papers as these, on petitions such as these, on oaths of contractors such as these, filled all over with erasures and changes, orders were made. Now, what was the result of all this carnival of corruption or carelessness? As I said a little while ago, or early in my remarks, the matter concerns the question of star routes. We shall show you that at the end of the year 1880, there were nine thousand two hundred and twenty-five star routes in the country, with an aggregate length of two hundred and fifteen thousand four hundred and eighty miles. The annual cost at the end of 1880 of mail service on those star routes was, if my figures are correct, \$6,401,834, out of an aggregate cost of the mail service at that time of \$16,723,000. As to these figures there can be no considerable discrepancy.

Now, it was upon these star routes that Mr. Brady operated under the sections as to expedition and increase of service. It was as to these routes that Mr. Brady disregarded the provisions about advertising, the lowest bidder, and everything of that kind, and applied to these routes what had always been treated as an exceptional remedy meeting exceptional cases. He made that the practice. He made what was intended as the medicine of the postal service its daily bread.

Now, as I have already said, in the fiscal year ending the 30th of June, 1872, there were only six cases of expedition; for the two years 1875 and 1876 there were only seven. Brady, in his first year and less than a year, made sixteen cases of expedition, running up contracts of \$184,000 to \$382,000, considerably more than doubling it, and he added to two hundred and fifty routes, which were let at \$604,000, \$1,090,000. On four hundred and nineteen routes, let at \$404,411.22, the expenses under Brady grew in thirty months from that sum of \$404,000 to \$2,306,481.27. On ninety-three of these routes, controlled by thirteen favored contractors, an original sum of \$762,858 grew, under Brady's fostering care, to \$2,723,464 in the brief period of thirty months. In eighteen months, from July 1, 1878, to January 1, 1880, ninety-two routes were expedited under Brady at an increase of \$1,218,115, and on two hundred and forty-four routes, \$895,000 were added for trips and other purposes. During the first half of the fiscal year 1879-'80 the extra allowances made by Brady were \$761,000. Dorsey and these defendants, at the letting in the spring of 1878, got

one hundred and thirty-four routes, with a contract price of \$143,169.62. Before Brady went out of office they had been increased to \$504,168.95; from \$143,000 up to \$504,000. Taking the routes expressly mentioned in this indictment—I confine myself now, Mr. Wilson, to the indictment—the original contract paid was \$41,000. Mr. Brady nursed it up until it was \$448,000; something over ten times did he increase it. Now, you will bear in mind, gentlemen of the jury, that that is the annual price, \$41,000 a year, carrying up to \$448,000 a year. If we deduct all fines and deductions imposed upon them for failures to carry out their contracts; if we deduct all changes that were made in their routes, we find this: That all these routes in this indictment, which were left at \$41,135, which up to the present time the pay at which they were let would amount to an aggregate payment of \$133,689, being for three and three-quarter years. Forty-one thousand dollars was the original sum. Up to this time it would become \$133,000; and yet under Brady's fostering care there has been paid upon those routes up to the present time \$890,824.01. Let me state that again. The contract price was \$41,000 a year for four years. In less than four years, a quarter of a year still remaining, leaving out all deductions that had been taken off by fines imposed upon them, those \$41,000 a year of contracts have in three and three-quarter years drawn from the Treasury \$890,824.01 for the benefit of some or all of these defendants here. I am talking now about routes in this indictment, not routes which they had which are not in the indictment, because there must be a limit to your patience and to our industry. The Post-Office Department could not go through the whole one hundred and thirty-four routes and select them. Moreover, in the lapse of time, there has occurred what has already been referred to; that on some routes the statute of limitations have run against any overt act which we can rely upon as a criminal overt act, and therefore we could not include it here. But merely taking these routes here under contracts for \$41,000 a year, there have been drawn from the Treasury by these defendants \$890,824.01. They might have left us the one cent, gentlemen. As Brady went out in March or April, 1881, and as the service was cut down as soon after that time as honest officials could get to work, this large sum of \$757,000 in excess of the contract price was practically taken from the Treasury in less than three years, and made a comfortable sum from which "divvies" could be paid of \$250,000 a year.

Now, perhaps it might be said that this money all went in carrying the mail. Let us see about that. We shall show you that on the Kearney to Kent route, No. 34149, while the contractor got \$2,715.08 for sitting still and attending to Washington expenses, the subcontractor, who did the work, got \$1,587.40; that on the Pueblo to Rosita route, 38134, while the contractor got for sitting still in Washington \$5,048 the subcontractor got \$3,100, and he found that there was so much money in that he got somebody to take a sub-subcontract from him for \$2,600. On the route from Saint Charles to Greenhorn, No. 38135, Mr. John R. Miner, as contractor, got \$3,945.60, and he made a contract with a Mr. Farrish to do the service for \$840, and when Mr. Farrish went out Mr. McDaniel came in and took it for \$900, and performed all the service for \$900 while Miner was getting the \$3,900.40.

Mr. WILSON. What is the number of that route?

Mr. BLISS. No. 38135. On route 41119, from Toquerville to Adairville—that is the route on which Mr. John W. Dorsey said that it was "nearer *pro rata* than any trade that I have made since I left home"—the contractor got \$12,450.22, and the subcontractor, who did the work,

got \$8,444. On route 38140, from Trinidad to Madison, the contractor got \$2,402.25 and the subcontractor got \$1,550. Mind you it is not \$1,555 out of the \$2,402. It is \$2,402. All these sums are net to the contractor. From Silverton to Parrott City, route 38156, the subcontractor, who did the work, got \$9,400. The contractor sat still and bit his thumbs and got \$7,112.20. Bit his thumbs and bit the United States. On route 38145, from Garland to Parrott City, at one stage of the time the contractor got \$5,433.08 and the subcontractor \$8,000. But at another stage of the time the subcontractor got only \$6,200, and the contractor, therefore, the additional amount. Subsequently the contractor got \$7,244.08. Then the subcontractor, who did the service, got \$10,666.64. And that is one of the cases, gentlemen of the jury, in which Mr. Brady put upon the record in his order for expedition his own conviction for making an expedition to allow from the Treasury of the United States what was not a proper sum to be paid for doing the service. He put clearly into his order that there should be an expedition in which there should be paid by the Treasury \$17,910.72, and that out of that \$17,900 only \$10,000 should go to the man who was to do the work and \$7,200 should go to the man who was here. Why, gentlemen, just look at it. Here is a public officer who is to make an allowance from the Treasury of what should be properly paid for carrying the mails on this expedited time, and he puts clearly into his order that he gives \$10,000 to the man who carries the mails, and he gives \$7,200 to the man who does not carry the mails. In point of fact, gentlemen of the jury, there was one period on that route where, under the contract made between the contractor and the subcontractor, the subcontractor who did the work would have got \$2,120, and the contractor who staid at home and did nothing would have got \$13,999.50. I say would have got, because there was some complication which arose upon that point which it is not necessary to refer to in this connection. And bear in mind, gentlemen, all these sums that I give you of what the contractor got are net to him. But as to the subcontractor they are subject to the reductions that he has to bear for all the fines and all the deductions. If, owing to accident, he did not arrive on time, off came some portion of his pay. If, for any reason, he missed a trip, off came some portion of his pay. But it made no difference to the contractor sitting here in Washington, always provided the fines and deductions were not more than enough to eat up the subcontractor's portion. If the fines and deductions were more than enough to eat up the subcontractor's portion then the contractor had to make a further "divy" from his own share.

On route 44164, from Canyon City to Fort McDermott, the contractor got net at one time \$11,500, while the subcontractor got \$10,000. At another time, after a little more of the Brady medicine, the contractor got \$30,166.66 net, and the subcontractor \$20,000. On route 46247, from Redding to Alturas, the contractor got \$14,925, and the subcontractor who did the work got \$21,000, and that Brady again puts squarely into his order; a square declaration that all it was worth to carry the mails on that route at that time was \$21,000, and a square declaration that he was paying \$14,925 more than it was worth. Subsequently one trip was added, and on that trip, in some way by the order, there was given to the contractor \$5,988, while the subcontractor got but \$2,000. The result finally on that route was that the subcontractor who performed the service got \$23,000, and the contractor who sat still and made his arrangements in Washington, \$18,916. These are all annual sums, gentlemen. On route 35015, from Vermillion

to Sioux Falls the contractor got \$3,983.50, and the subcontractor got \$2,150. On route 44140, from Eugene City to Bridge Creek the contractor got \$14,060.89 and the subcontractor got \$7,400. And in that case, too, the two sums were put in the order for expedition. And I may say here that nobody can go through the records, we shall put before you, without seeing at once that the parties who were engaged in this business had become careless, and that they did their work and left their tracks behind them in a way that they never would have done if they had conceived that there was to be an honest investigation of the matter. On route 44140 from Eugene City to Bridge Creek the contractor got \$14,060.89 and the subcontractor \$7,400, by order. In subsequent changes the amounts vary. The contractor got \$11,960.89 and the subcontractor \$9,500, the contractor got \$9,460.89, and the subcontractor \$12,000. On route 40104, from Mineral Park to Pioche, the contractor got \$9,700, and the subcontractor \$12,600. At another time the contractor got \$24,033.33, and the subcontractor \$28,000. On route 38113, from Rawlins to White River, the contractor got \$8,648, and the subcontractor \$23,333, and those were specified in the order.

Now, gentlemen, I have mentioned that in certain cases these sums were specified in the order. The fact is that whenever a subcontractor puts his contract on file there it was necessary. The subcontract was there. The law required it to be recognized. Mr. Brady could not disregard it. He, therefore, was compelled in his order to put the entry of his own misconduct on record. But, gentlemen, these subcontracts are on file in but very few of the routes, and that reminds me that I have passed by one little peculiarity.

As I have said, the law passed in 1878 for the benefit of subcontractors authorized the subcontractor to put his contract on file. That was regarded as a very proper and beneficial law. It was reserved for the gentlemen who are defendants in this case, so far as I can find, to devise a way in which its beneficent effect should be avoided. They promptly proceeded to put on file subcontracts with themselves. I do not recall the combinations, but they were about like this. Mr. John W. Dorsey makes Mr. Peck subcontractor. Mr. Peck makes Mr. S. W. Dorsey subcontractor. Mr. somebody else makes Mr. Rerdell a subcontractor. Now, what is the result of that? It is twofold. In the first place, the subcontractor doing the work out in the Territory, with no knowledge of these refinements of the law, has a subcontract and understands that the Government recognizes subcontracts and supposes he is all right. He goes on and performs the service and by and by he does not get his pay and he sends or comes to Washington, and he finds there is another subcontract on file and the law only allows one subcontract on file at a time, as there could only be one honest contract in force at the time, and he cannot get his subcontract put on file. In one case we shall show you, that is on the Jennings routes, I do not remember which it is Mr. Wilson, but you are familiar with it, I think—the subcontractor sent his contract here to Washington to the Delegate from the Territory. The Delegate took it to the Post-Office Department and left it, and it was not until after the contractor had been going on for months or years performing the service, and when he did not get his pay on application here, it appeared for the first time that there had been another subcontract made with Rerdell, I think, or another of these defendants, before his subcontract got here; that that subcontract of his could not legally be put on file, and while the clerk had received it from the hands of the Delegate, he had never told him any of those facts, and it

had been left in that way. Now, that was one result of the contractor's action. But if they could keep off the file the contracts of their subcontractors who were doing the service at a less rate than the full pay, then there was no ugly snag in the way from the subcontract being on file when they came to make expedition and increase of service, and there did not have to be put directly into the order that square declaration that more money was being taken from the Treasury than was necessary to perform the service, and, therefore, in very many of these cases, you will find one or other of these defendants makes another of them the subcontractor, and he carefully makes him a contractor at the full pay. I think I am justified in saying, gentlemen, when I call your attention to these figures as to the way in which the star-route service of the country was run up, and the way in which the routes in this particular indictment were run up, that I have shown you that the excessive amount of money used was not necessary for running the mails on those routes. It may have been used for running something else, but it was not used for running the mails.

Now, dealing with the matter broadly, the star service in the States west of the Mississippi, including Louisiana as west of the Mississippi, because a portion of it is west of it, on the 1st of July, 1878, after Brady had been at work nearly a year, and after he had in the aggregate star-route service put it up \$800,000—to give him the credit of that little margin to start with—cost \$2,000,000. On the 1st of July, 1879, one year afterwards, Brady had run up the star-route service west of the Mississippi to \$3,706,977; \$1,700,000 increase on a start of two millions.

Now, gentlemen, it is not surprising that with all that extravagance, though Mr. Brady had himself made up the advertisement of the service and the estimate asking from Congress the amount needed for the star-routes, and although he had got from Congress all that he asked for—it was one of the exceptional appropriations made at that time when our Democratic friends were engaged in cutting down expenses and they did not give the departments what they asked for, but for the star-route service everything that was asked for was given—yet, when that year was two-thirds over Mr. Brady had to go to Congress and ask an appropriation of \$2,000,000 to make up the deficiency caused by acts such as I have described to you. There was an investigation which seems to have gone along for a certain distance and then stopped. At any rate he got \$1,250,000.

I think that incidentally, in connection with one portion of this case, we shall lift the curtain just a little way and give you an opportunity to understand how he got the money out of Congress. But he got it, and he got it with a proviso in the act which has been claimed in the progress of this case was a pardon for everything past and future. The court held otherwise, and that matter, therefore, need not be gone into.

Those were the figures on the star-route service for the routes west of the Mississippi. There has been since this investigation commenced a letting of contracts over the same regions, as to which I shall have occasion to say something directly. The aggregate star service of the country cost under Brady on the 1st of July, 1880, \$7,264,832. At the rate at which the service will be under the recent letting of the territory west of the Mississippi, which is a four-year letting, the whole star-route service will cost on the 1st of July, 1882, \$4,486,755, allowing three-quarters of a million of dollars for unexpected contingencies, expedition, or anything else that may come up. The service which under Brady cost \$7,264,832 has been submitted to a public bidding, where the lowest bidders can get a chance, and where there were no favored

contractors. The result has been that that \$7,200,000 has been reduced to \$4,406,000.

Mr. WILSON. Now, Colonel Bliss, will you allow me to ask you whether you claim that there has been the same service——

Mr. BLISS. [Interposing.] I am going on to say——

Mr. WILSON. Do you say it is the same service?

Mr. BLISS. I am going on to say——

Mr. WILSON. I want to know whether you say it is or not.

Mr. BLISS. Wait until I get through. I shall be fair with you about it. There has been saved \$2,778,000, of which \$1,778,000 was saved by the square cutting off, instituted by the administration of General Garfield, of the contracts which Brady had run up. That cutting off began under General Garfield by Mr. James, the Postmaster-General, and Mr. Elmer, the Second Assistant Postmaster-General, cutting off \$1,778,000 of Brady's extravagance, and the Post-Office Department has not to this day, outside of the interested and paid remonstrances of contractors and their counsel, received from the people along the routes in the whole country twenty remonstrances.

Mr. WILSON. You have not answered my question.

Mr. BLISS. I am going on. Wait until I get through. You want to put me on the witness-stand. Wait until I get through talking. If I do not talk enough, and you want more out of me, just touch me up.

Mr. WILSON. I would like to have you on the witness-stand.

Mr. BLISS. You cannot have me now.

Mr. WILSON. I know I cannot.

Mr. BLISS. There is a good deal in this case that you can't have, and a good deal that you will have that you do not want.

Mr. WILSON. We will get the facts after while.

Mr. BLISS. [Continuing his argument.] The cost per mile on the 1st of January, 1881, under Brady's administration of the star-route service, was \$16.99. The cost per mile under the existing service, or as it will be under the new contracts, will be \$8.62, a reduction of nearly one-half. The cost in the States west of the Mississippi was, on the 1st of January, 1881, \$2,844,165. On the 1st of January, 1882, it will be \$1,125,419. All this has been done, as I have said, without remonstrance from the public. Since General Garfield came into office there has been, I think, no case of expedition except that on the 8th day of March Thomas J. Brady did make an order—though I am not sure it was for expedition—but for expedition or increase upon a route on which we shall show you that one of these defendants sent to the West a letter in February, saying that he had arranged for increase or expedition, but there must be petitions, and that they must get here before the 4th of March; that he did not know how he could carry out his arrangements afterward. The petitions did not get here in time; but on the 8th day of March, four days after the new administration came in, Thomas J. Brady made the order granting expedition or increase upon that case, and when the journal of the day containing the record of the business came to Postmaster-General James for signature, he directed that that order should be countermanded. Subsequent to that he had a conversation with Mr. Brady, showing that Mr. Brady knew of that direction to countermand, but after Mr. Brady went out of the department two or three months later, when this investigation, of which this indictment is one of the results, and only one, was going on, it was discovered that there was a sporadic increase of cost under Mr. James's administration; and on inquiry it was found that the order which Mr. James had directed countermanded on the 8th day of March upon that

route about which one of the defendants had sent that letter to the West had never been countermanded, and the service had been going on and pay been made under it. That is, I think, the only order for expedition—if it was expedition—that has been made either under the administration of General Garfield or of the present President.

Again, at the present letting, the total cost of the service in the Territory of Montana is only \$9,500 more than Brady allowed the contractors on one favored route. We all know that Montana is a Territory which has been developing, and has more need of mail service to-day than it had four years ago. In Wyoming, cost by the entire star-route service of the Territory is but little more than half as much as Mr. Brady allowed the contractors on one single route. The entire service of Wyoming under the recent letting costs but \$51,524.

There was a single route in Wyoming which under Mr. Brady was run up to \$100,165.83. I call Mr. Wilson's attention to the fact that it is difficult to compare specific old routes with specified new ones.

Mr. WILSON. Give the reason to the jury.

Mr. BLISS. They are changed in point of time. They are changed somewhat in distance. There are all those changes. It is difficult, save in one or two cases, to make an absolutely correct comparison.

Mr. WILSON. Will you allow me to suggest another difficulty which you have forgotten, that a great many of these routes have had railroads built over them, and are now supplied by railroad mail service.

Mr. BLISS. Of course, if they have had railroads built over them they are not star routes any longer, and therefore do not come into the calculation. That is one of the reasons why we cannot make any calculation. I do not want to go into that question; but I expect to prove the amount of additional railway mail service, and you will find it will not help you one particle.

Mr. WILSON. All right; I simply wanted to remind you.

Mr. BLISS. I know you want to remind me. There were a good many things not in the existing mail service that were in the old service; and most prominent among them is Thomas J. Brady.

Now, there are thirteen routes in this indictment which may be compared as being substantially the same in distance. They are not the same either in time or in the number of trips, because Mr. Brady made them excessive in time and excessive in trips. But let us see what the result is, and let us see how wonderfully the public benefit of requiring bidding for routes is shown by the result if the action of the present Post-Office Department in revising the service. On thirteen of these routes, Mr. Brady had by expedition carried them up to \$219,886.46. They were reduced under the administration of Mr. James to \$32,603.88 by cutting off Mr. Brady's extravagant additions of speed and trips; reduced from \$219,000 to \$32,000. At the recent letting they were let for \$31,012, being about \$1,500 less than the amount to which Mr. James and Mr. Elmer had cut them down. The service, as I have said, on those thirteen routes, is over the same distance. It is not, of course, the same number of trips, nor is it the same rate of speed.

There are two routes, Nos. 40105 and 46132, where the routes are substantially identical, although the first has been reduced somewhat from its original condition, but I think it is the same as it was after a reduction made before Brady went out. Under the new service it is let for \$5,994. Under the Brady régime it was let at \$9,119.

Mr. WILSON. Both of them were the lowest bids, were they?

Mr. BLISS. No, sir; that is the amount which is carried up, I think.

Mr. WILSON. Oh, no.

Mr. BLISS. I will not say. The route from Julian to Colton was \$8,910 before, and is now \$3,488. Now, I will give you one that will suit you.

Mr. WILSON. In both cases they were let to the lowest bidder.

Mr. BLISS. I will give you one route that will suit you, and then I submit that you should stop this running comment. Silverton to Parrott City, No. 38156; time, trips, distance are identical; made by Brady, \$14,870.01. Let at the recent letting at \$4,240; a difference between \$4,240 and \$14,000.

Mr. WILSON. Has that service been put on yet?

Mr. BLISS. The service has not been put on, of course. Now, Mr. Wilson, excuse me for saying I shall appeal to the court if these interruptions do not stop. I have been very patient.

Mr. WILSON. Well, go on.

Mr. BLISS. The service has not been put on yet. If it is not put on, however, the present Post-Office Department will act with regard to the contractors very differently from the way Mr. Brady acted with reference to his contractors.

On ten routes where the service is identical, so far as I can find it, Brady paid \$174,369.21, and it has just been let at \$73,880. When I say the service I do not mean the same number of trips, but I mean doing the same thing.

On twenty-three cases, where it is not quite identical, and yet where if anybody will look at the list they will make up their mind that under the recent letting the service is at least as large as it was before, and I think larger, the old expense under Brady was \$591,914. It has just been let at \$224,430, and though the service has not been put on the Government has got its contracts, and the Government has got its sureties.

Mr. WILSON. May it please your honor, the colonel says he does not want me to interrupt him. I feel that it is due to truth and justice that I should call your honor's attention to the fact that he is now instituting before the jury a comparison between a letting that happened four years ago and a letting that has now been had with reference to contracts which have not been entered into, or if they have been entered into it is yet to be determined whether the parties who made the contract will ever put the service on at all. You can see, if your honor please, how entirely unfair that is to these defendants. There are many elements entering into these things——

Mr. MERRICK. [Interposing.] Allow me to interrupt you a moment. You interrupted my colleague.

Mr. WILSON. Certainly.

The COURT. No. I think one interruption is quite sufficient.

Mr. MERRICK. This a question of evidence. When we offer it, if it is not admissible it will not be received.

The COURT. I want to hear Mr. Wilson, and then I will reply to him.

Mr. MERRICK. Very well. It is a question of evidence I submit. That is all I want to say.

Mr. WILSON. If the court is going to reply to me, as a matter of course I shall be most successfully answered, because the court has control of this thing. I was simply suggesting this, may it please your honor. It seems to me to be a most unfair statement to go to the jury in this case, and that it ought not to be permitted for the gentlemen to draw comparisons between something that is to happen in the future and what has happened under the administration of the defendants in this case. It is not the statement of facts that they propose to prove. I

can illustrate, if you will allow me. Suppose a post-route is established by act of Congress between two terminal points, and that that occurred six years ago. One contractor went in and bid on that route when there was not a station; every station had to be built, a great deal of work had to be done, and all these expenses had to be incurred. He went in and pioneered the way for that service. Now, after all this has been done and the mails have been carried for four years, then comes in some person under this changed state of circumstances to make a bid on the route, and he bids for so much. They are compelled to let it to the lowest bidder. The Postmaster-General, in both cases, lets to the lowest bidder, and cannot do anything else under the statute. Now, for the prosecution in this case to stand before this jury and to arraign these defendants and claim before the jury as an indication of bad faith, or fraud, or what not, this thing that happened four years ago—to say that it is an evidence of bad faith that in this development that has occurred in the country somebody is willing to bid lower than anybody was four years ago, it seems to me, is exceedingly unfair, and very apt to be misleading to this jury.

Mr. BLISS. That has not been my argument.

Mr. WILSON. At the proper time we will have the opportunity to explain all these things to the jury, and we expect to explain them. Mr. Bliss objects to my interrupting him, and I suggest to your honor that he ought to be interrupted and confined to a statement of the facts that he proposes to prove. Now, he can only prove those facts that were performed by my client. So far as my clients are concerned he certainly could never be permitted to prove what somebody else has done four or five years after the fact, in order to institute a comparison between what somebody else has done and the acts of my client for the purpose of reflecting upon my client.

The COURT. It is charged in this indictment that Brady, as Second Assistant Postmaster-General, made these extravagant and unwarranted allowances under the claim of increasing the number of times and expediting these routes. I understand that Mr. Bliss is addressing the jury at the present time, and referring to what he says are facts which will tend to show that the allowances made by Brady were not only extravagant and without reason, but that they must have been fraudulent, and that one of the means by which he can show their extravagance is a comparison of the cost of doing the same kind of work now and what was allowed by Mr. Brady then. I cannot tell now whether he is going to succeed in making out similar cases.

Mr. INGERSOLL. That is it.

The COURT. You say he cannot make out a similar case. He has not yet offered his evidence. He is merely stating to the jury, as I understand it, that, so far as the cases can be compared, the recent lettings show a reduction in the cost of the same character of service of at least fifty per cent. Now, the court cannot say that this is immaterial evidence. How can the court say what degree of weight such facts as that may have with the jury? The weight of the evidence, of course, will depend on the similitude of the cases. But he has not offered his proof. He is merely stating what he is going to show in cases very similar, where the services were very like, and partly over the same routes; and that, taking all this evidence together, it appears by this test that the allowances made by Brady were fifty per cent. more than the service was entitled to.

Mr. WILSON. Will your honor please allow me a word right there?

The COURT. Yes.

Mr. WILSON. Your honor used the words "allowances made by Brady." I know you did not intend it. If your honor had sought for a word and had the power to coin a word you could not have used one that would have been more misleading. You will pardon me for the expression. I know your honor did not intend to use the word in any improper sense. But let us see: Four years ago I being a bidder on mail contracts, and all these gentlemen around here being bidders, all put in our bids on a certain route. I bid lower than anybody else. The Postmaster-General is compelled to let me have that route. He cannot help himself. Very well. I bid \$5,000 on that route. The Postmaster-General and the Second Assistant do not make me an allowance of \$5,000. I bid lower than any of these gentlemen, and I am entitled to it by law. The Postmaster-General has no volition about it, nor has the Second Assistant. Very well. It comes on four years later and all of us bid again, and some man bids down to \$3,000, and the Postmaster-General is compelled to let the route to that man. It is the act of the bidder and not the act of the Postmaster-General.

The COURT. Undoubtedly.

Mr. BLISS. My comparison is not with the bids of four years ago, but with the sums which Mr. Brady fixed by "Do this. Brady."

The COURT. I think I used the word I intended when I used the word "allowance." I used that word in connection with the expedition of the routes and the increase of the number of times of transportation. As to that it was very much within the discretion of the Second Assistant Postmaster-General. It was his duty to find out how much money was necessary to expedite the routes. He was not limited by the contract. He was not constrained by the contract except in this; that he was not to exceed a *pro rata* allowance. Now they say here that the bids were a sham in a great many instances and merely for the purpose of putting it in the power of the Second Assistant Postmaster-General to exercise his right to make these allowances for expedition. Now I cannot on an interruption of the prosecutor's opening, undertake to determine a question of evidence. If the prosecuting counsel is stating fairly what he expects to make out the court is not going to arrest him in his argument because the court may have some doubt as to the competency of the facts that he states as evidence. I cannot allow him to be interrupted and have the question of the competency of his testimony discussed and determined at this stage of the trial. I think that Mr. Bliss is entirely within the proper scope of his duties in opening the case to the jury. When he comes to offer his evidence, then the court will hear you upon your objections.

Mr. BLISS. Your honor, if I thought I was going to get through in a reasonable time, I would ask that the sitting be prolonged to enable me to do it. But I have considerable more ground to go over and do not think I can get through within a reasonable time; and as I have been talking over four hours, I think I may fairly ask an adjournment especially as the time has been reached which your honors fixed for adjourning.

The COURT. This is the usual hour for adjournment. The question is about adjourning until Monday.

Mr. TOTTEN. If your honor please, I have conversed with some of the gentlemen upon the other side, and it occurs to me that we had better pursue our usual custom. We have gotten into the habit of doing business in a certain way in this court, and I do not think we ought to depart from it now. It may happen in the course of five or ten days that your honor may see some necessity for a change. We

have all gotten into the habit of so arranging our business that we may have Saturday for the purpose of attending to outside matters, and I desire simply to suggest to the court that, unless there is some reason to the contrary, we ought to pursue the ordinary method of doing business. I believe it is the wish of the other side as well as of our side, and if there is no public emergency, I think we ought not to go on until Monday morning.

The COURT. What do you desire, gentlemen of the jury?

The FOREMAN. [Mr. DICKSON.] I have been consulting with some of my colleagues, and I think they agree with the suggestion that has been made.

Mr. BLISS. To have an adjournment until Monday?

The FOREMAN. Yes.

The COURT. You prefer it?

The FOREMAN. Yes.

The COURT. I do not see any great urgency for a departure from our general course. It has not been the habit of this court to sit with a jury on Saturday. Counsel and jurors and the court all have private business of their own requiring attention, and besides one day extra for relaxation of mind on the part of counsel engaged in such a case as this is not time thrown away. I see that Mr. Bliss is a good deal exhausted and probably will scarcely recover his strength by to-morrow morning. At any rate, at this stage of the case, we will not depart from our usual rule. Later in the trial, if the court comes to the conclusion that it will be necessary to sit on Saturday in order to reach the end of the case before the heat of the summer commences, the court will change the rule. I have been assured by counsel that there is no probability of this trial lasting beyond the 4th of July.

Mr. WILSON. I suppose Colouel Bliss will occupy another day in the statement of the case.

Mr. BLISS. No; not another day. Have a little pity.

Mr. WILSON. Probably we will all get through about the 4th of August, your honor.

The COURT. "Sufficient unto the day will be the evil." In the mean time we will observe our old usage, and adjourn over until Monday.

At this point (3 o'clock and 10 minutes p. m.) the court adjourned until Monday morning at 10 o'clock.

MONDAY, JUNE 5, 1882.

The court met at 10 o'clock a. m.

Counsel for the Government and defendants being present.

GEORGE BLISS, Esq.,

resumed his address to the jury, as follows:

When I closed, gentlemen of the jury, the remarks which I addressed to you on Friday, and to which you listened so patiently, I had gone over the general subject of the scheme of the post-office laws requiring public advertisement and the letting of contracts to the lowest bidder; I had called your attention to the circumstances under which, according to our view, increase of service and of speed was allowable; I had

called your attention to the limits fixed by the law beyond which in the allowance for pay for increase and expedition no officer of the Government had a right to go; I had called your attention to a disregard of obvious business principles on the part of Mr. Brady, both in the extent of the pay he allowed, and in the evidence upon which he based it to the altered oaths, to the evidence that was before him in the subcontracts, and in the protests of postmasters and others that expedition or increase of service was not needed, or, if needed, that the amount he allowed for it was excessive; to the fact that having himself made the advertisement for the service of 1878, having obtained from Congress all the appropriation that he asked for that service, there was at least a presumption that if he had done his duty in the preparation of the advertisement, and the estimating for pay, there could not have been within a short period thereafter a legitimate demand for any considerable amount of increase or expedition, and that there could not have been a legitimate need of any such increase in the expense of the star route service as would have required him after nine months of the fiscal year had gone by to go to Congress and ask an extra appropriation of \$1,700,000 in excess of the sum he had himself estimated would be necessary.

I think I omitted, in that connection, to call your attention to one significant fact, and that is that though the service under these contracts with the Dorseys referred to in this indictment commenced on the 1st of July, 1878, and though the Dorseys and their associates got one hundred and thirty-four contracts, yet, as applicable to those contracts alone, during the year 1878 Mr. Brady made sixty-six separate orders increasing the pay of these defendants, and in the year 1879 he made seventy-two additional orders increasing the pay of the defendants. In other words, he made one hundred and thirty-eight orders increasing the pay on the routes awarded in the bidding to the Dorsey combination, on which the service commenced on the 1st of July, 1878 or should have commenced, and he made that large number of orders increasing their compensation within two years after the contracts were made.

I called your attention, also, to cases of improper expedition, as we claim; cases where the mail was already being carried in less time than the expedited time; cases where expedition was impracticable; a long series of those. I also called your attention to Mr. Brady's leniency in failing to declare them failing contractors, and allowing them the time at the inconvenience of the public, to say the least, to get ready petitions for expedition. I called your attention to the fact that petitions were presented altered, applied to routes to which they did not apply altered to ask for expedition when they did not ask for expedition, and various things of that nature. I intended to have called your attention to one question which I do not desire to raise, because it is perhaps a fair matter of difference of opinion, and yet attention ought to be called to it; as to the provision of the expedition:

No extra allowance shall be made for any increase of expedition in carrying the mails unless thereby the employment of additional stock and carriers is made necessary.

Now, the question is, what comes within the meaning of that phrase "stock and carriers?" There can be a question as to what is covered by the word "stock;" whether it means simply the animals used in carrying the mail or whether it means the whole outfit of the contractor. In these affidavits which were presented to Mr. Brady it was apparently assumed that it was confined entirely to the animals. I am not

prepared to say that that is not the correct construction of the law, and yet it seems to me that you should bear in mind that if that is to be accepted as the construction of the law, when we go to the evidence, whatever evidence may appear of anything outside of the additional number of animals being required, we must regard as necessarily having no pertinency to the question of the proper allowance for increase of pay for expedition.

There is another view of the matter which ought to be called to your attention. If the questions of men and animals rendered necessary by expedition are to be considered as consolidated so that when the affidavit states that there will be needed six more men and twenty more animals at the expedited rate than at the present rate, and that therefore in putting your problem in the rule of three you are to say as the existing number of men and animals in the aggregate is to the present number, so is the number of men and animals in the aggregate which will be needed on the increase of pay to the pay to be allowed. Then you will bear in mind that in the instance of which I speak if you take twenty-six for example, as the additional aggregate to be allowed, but take them separately, and say there are six men and twenty animals, and you compare them at all in the sense in which it is done in the detailed statement that I read to you on which expedition was obtained in January, 1876—there the men were put down as costing so much and the animals as costing so much—and the result is in a given case of expedition; if you divide the expense, one man at so much expense and one animal at so much expense more or less, and calculate the cost of expedition on that rule, you will find that you will arrive at one sum as the limit which can be allowed; but if you put the two together in the aggregate you will find that you arrive at another sum; and I think we shall be able to show you, gentlemen of the jury, in the progress of this case that whichever of those calculations would produce the largest sum to the contractor was always pursued in allowing expedition to these parties; that they did not follow one uniform system but pursued the system which would allow the largest sum to the contractor.

I think we shall be able to show you, gentlemen of the jury, that these oaths upon which Mr. Brady granted the amount of pay to be allowed for expedition were by their own statement mere estimates not to be relied upon in any sense, and were by their own statement in one case at least untrue. And in connection with the matter of expedition I desire to call your attention to another feature of the case which has a marked bearing upon the impropriety of the course pursued. Whenever a contract is advertised to be let, the Postmaster-General or the assistant postmaster-general under the law is required to take a bond with sureties. The amount of that bond is fixed by the assistant postmaster-general, and is gauged with reference to the amount agreed to be paid for the service under the contract. And yet, when the service is expedited and the pay increased, the Government gets no additional bond. The result of this can be shown, for instance, with regard to the Tongue River route where the bid was originally about \$2,900. I think the bond was about \$1,500—it may have been more, but that is unimportant. The route was carried up to \$50,000 or \$60,000, and the Government got no additional security. I merely call your attention to this matter. Of course there is not within the express provision of the law any authority to change the bond; but if it be claimed that there was no authority to exact, therefore, an additional bond on these cases of expedition, then I call your attention to the fact that inasmuch as no additional bond could be required, it imposed upon Mr. Brady the greatest

additional care in seeing that he made no expedition which was in excess of the demands of the service; that he made no expedition that was impracticable; because if he did he had then no adequate bond to fall back upon in case the law was not complied with by the contractor.

Now, as to this condition of things which we claim we shall be able to show, there may, of course, be one defense for Mr. Brady, and, as seems to me, only one; and I desire to call your attention to some features in the case which will perhaps render that defense inadmissible. It might be possible for Mr. Brady to claim that he was deceived; that he believed these petitions spoke the real unbiased opinions and wishes of the communities through which the mail routes passed; that he believed these petitions were genuine and unaltered, were in the form in which they left the communities, and were signed by persons interested in the mail service; that he believed these oaths were correct; that he believed that they stated the actual facts, and in general that he acted in entire good faith. We think we shall be able to show you during the progress of the case a large number of facts which will convince you as fair men that this defense could not be true. Mr. Brady could not have believed that expedition was needed on a given route simply on the statement of a contractor, or on the statement of a single Senator, when he had the petitions of all the postmasters along the route, stating that there was no need of any additional trips, or additional service. He could not have believed that the amount of allowance he made for expedition was necessary or proper when he had before him the evidence, in the subcontracts on file, that it was more than was needed to procure the carrying of the mail. He could not have believed that these petitions were genuine from the very nature of them from a casual examination of them. If he made an examination of them—and he had no right to act without an examination—he could not have believed that they were genuine. In my opening it was not permitted to me—very properly—to exhibit any papers to you and therefore I simply have to pass them over until the time comes when we shall offer them in evidence. Then if they are received by the court you will have an opportunity to examine them, and I think you will say that no fair man looking at those papers could have believed that they were genuine and unaltered.

But, gentlemen of the jury, if it be true that Mr. Brady was deceived, without elaborating the question here, I simply want to ask you to reflect who deceived him; and if it is Mr. Brady's defense that he was deceived, where does it leave the other defendants?

I have spoken so far almost exclusively of Mr. Brady, for two reasons: In the first place, if guilty, we regard him as the most guilty of all the parties before you, for he was a high public official, so high that he has claimed that he could not be tried in this court or in ordinary courts, but that he must be tried by the process of impeachment. Of course we expect to satisfy you that Mr. Brady is guilty. We believe that we can do it. I think in your minds you will agree with me that if I can prove one-half of the statements I have made to you hitherto Mr. Brady must be a guilty man. After careful examination and reflection and reading of everything I have said, I am prepared to say upon my responsibility as counsel, that I do not think in anything I have said, even in the heat of speaking, I have exceeded what I expect to prove. And the three gentlemen who are most conversant with the evidence, and who know more of it than anybody, assure me that we have understated what we can prove.

Now, as to other defendants. Stephen W. Dorsey was Senator

of the United States from the State of Arkansas until the 4th of March, 1879. These contracts were let early in the spring of 1878, and they took effect on the 1st of July, 1879. By a statute of the United States, Mr. Dorsey, being a Senator, had no right to be interested in any contracts with the Government. That is a fair statement of the effect of section 3739 of the Revised Statutes. Mr. Dorsey, as United States Senator, had been, or was, if I remember right, the chairman of the Post-Office Committee, and, I think, on the subcommittee in charge of the appropriations for the Post-Office Department. As such he was brought directly in connection with the Post-Office Department and its officials. Mr. John W. Dorsey was a resident of a little town in Vermont, Middleborough, where he was the agent of a manufacturing concern situated in another town, and was a tinsmith. John W. Dorsey was the brother of Stephen W. Dorsey. Mr. John M. Peck was the brother-in-law of Mr. Stephen W. Dorsey. He was in bad health, afflicted, as I understand, with consumption, and unable practically to attend to business. Mr. John R. Miner was a resident of Sandusky, Ohio, and had been for ten years the friend of Mr. Stephen W. Dorsey. Mr. Rerdell was from Arkansas, had appeared on the records of Congress in no very reputable position, was brought here and became a clerk in the office of the District Commissioners, and afterwards became Mr. Dorsey's clerk, or secretary, or something of that sort; and after the contracts were obtained he seems to have become the factotum of all the parties to the conspiracy. Mr. Turner was the corresponding clerk in the Post-Office Department, in charge of all the States except two to which the contracts involved in this indictment belonged. It was his duty to file and indorse the paper, as I have already told you. I called your attention from memory to one or two specimens of his peculiar facility for indorsing, so that the indorsements would show the contrary of what letters stated. If I were permitted to exhibit to you the papers, I think I could show you still more striking instances; but as the force would necessarily come from accuracy in statement, and as that might be considered objectionable, I can only say that as the evidence comes out we shall hope to satisfy you that what I have said of Mr. Turner's facility in indorsement was well founded.

Mr. Vaile's relations to the conspiracy were somewhat different. Mr. Vaile was undoubtedly a regular mail contractor, carrying the mails and engaged in that business. The others were all speculators in mail contracts. None of them ever carried the mail a mile. None of them had ever had any experience in or knowledge of the business. That is beyond dispute. They were brought together in some way and they got into this business of bidding for mail contracts. When they got the mail contracts they apparently had on their hands something that they intended to dispose of, not something they intended to use. They intended to dispose of them either by transferring the contracts where they proved unprofitable, to others in whose hands they thought they might be profitable, or by subcontracting to others; and as to the routes which afforded the best opportunity their scheme apparently was—and it was well carried out, as I think I have satisfied you—to procure an increase of service and an increase of speed. It is believed, gentlemen, that we shall be able to satisfy you by evidence that this conspiracy like other things of that nature grew gradually; that it had its origin some distance back, Stephen W. Dorsey being the chief spirit in the conspiracy; that there was in the early stages brought into the employment of the conspirators a Mr. Boone, who had both brains and

knowledge of the way in which the business of the Post-Office Department was done, and was fertile in expedients by which contractors could be benefited; that Dorsey brought in also Rerdell, the general factotum; that at some time J. W. Dorsey and John M. Peck were brought in, but they were practically little more than the mere willing tools of Stephen W. Dorsey, having interest in the contracts and sharing in the fruits of the conspiracy during a considerable part of its continuance. Peck, from physical incapacity, did little but make affidavits, and John W. Dorsey appeared occasionally upon the routes in the distant States to make arrangements for carrying out their business, and usually to make admissions which we shall be able to show you, and which are, as I think, pretty damaging.

When Mr. Vaile came into this business in connection with these gentlemen is a matter I must leave to the evidence. He certainly came into it very early. The circumstances under which he became connected with it are matters which must be developed by the evidence. But Stephen W. Dorsey might scheme and get up his clerks and his dummies and bring them all in, yet Brady was the main feature in making the proceedings in any sense profitable or successful. Money could not be made unless Mr. Brady allowed them to make it. Money could not be made unless Mr. Brady aided them in making it. According to our view, Mr. Brady bore no different or more especial relations to these conspirators than he did to various other parties connected with the postal service at that time. It was, so far as Brady was concerned, a mere mercenary question of who would make it the most beneficial to himself; he cared not whether it was Dorsey or a person of some other name. He went into office in 1876 certainly not a rich man. He came out after being there five years or less alleged to be a rich man, certainly dealing with large sums of money. It has been said that he has made large profits in a patented invention. The result of the evidence will show you that there was not in that invention any profit to him at all adequate to account for his changed circumstances.

The preliminaries leading up to the conspiracy, as we shall endeavor to show you, commenced as early as December, 1877. By section 3945 of the Revised Statutes, as amended in 1874 by the 18th Statutes at Large, page 235, it is provided that all proposals for carrying the mail shall be accompanied by the bond of the bidder, with sureties approved by the postmasters, and in cases where the amount of the bond exceeds \$5,000 by postmasters of the first, second, and third class, in a sum to be prescribed by the Postmaster-General in the advertisement. It is further provided that no proposal shall be considered unless accompanied by such bond, and that there shall be annexed to said proposal the oath of the bidder, taken before an officer qualified to administer oaths, that he has the ability pecuniarily to fulfill the obligations to be made in good faith, and with the intention of entering into contract and performing service if his bid is accepted.

Section 3946 provides that before the bond of the bidder is approved there shall be affixed thereto the oaths of the sureties taken before an officer qualified to administer oaths that they are worth double the amount of the bond over all debts due and owing by them, and the Postmaster-General may put a series of questions for the purpose of ascertaining what their real estate is, and its probable value.

Now, gentlemen of the jury, early in December, 1877, we find this condition of things which we shall show to you: That Albert E. Boone, the gentleman to whom I have referred, was engaged in sending out a large number of circulars to all the postmasters throughout the

southern and western country, in which he asked them for information as to the nature of the mail over each route, the character of the service, the expense for grain, and various information of that sort. He asked the postmasters to give him that information, promising them that if they would do it he would then gratuitously do any business that they might have from time to time with the Post-Office Department. He requested those circulars to be answered to the firm of James H. Keitner & Co., lock-box 714. You will hear a great deal of lock-box 714 in this case. It was the box to which, for a long time during the progress of this conspiracy, all the communications for all of these parties were by formal request, on file in the Post-Office Department, directed to be sent. James H. Keitner & Co. apparently consisted of James H. Keitner, the step-son of Albert E. Boone, who was a boy 16 years old. Those circulars were returned, and at the time of their return they attracted the attention of some of the inspectors of the Post-Office Department, who investigated the matter and anticipated that something was to come from it, but knew not what.

On the 17th of December, 1877, Mr. Boone procured to be printed in this city by the firm of Messrs. Darby & Duvall, I understand well-known printers, some duplicates of the form of proposals for mail contracts such as are issued by the Post-Office Department. I think it was 3,500 of those which he procured to be printed. They were a substantial copy in all operative parts of the blanks which the Post-Office Department furnished to everybody who wanted them, but they omitted some instructions which, in view of what subsequently happened, was a little noteworthy. They omitted these instructions:

Proposals altered by erasure or interlineations of the route, the service, the yearly pay, or the name of the bidder, will not be considered.

When the oath is taken before a justice of the peace, or any other officer not having a seal, except a judge of the United States, the certificate of a clerk of a court of record must be added, under seal of office, that the person who administered the oath is duly qualified as such officer.

A married woman will not be accepted as surety. Sureties are liable during the whole of contract term.

Postmasters will observe that the improper approval of the bond or the certificate of the sufficiency of sureties therein exposes them not only to dismissal, but also to fine and imprisonment. Certificates must not be signed until proposal is complete and bonds signed. Postmasters must not divulge the amount of any proposal certified by them under penalty of removal.

On the blanks, procured to be printed by Mr. Boone, those notes were omitted. Some time in the month of December, 1877, there were sent to various postmasters in the State of Arkansas—to the postmaster at Little Rock, to the postmaster at Fort Smith, and to one other postmaster—a quantity of these bids or proposals. They were sent with directions and requests to procure the names of sureties, the bidders' names being signed to them. They were incomplete in every sense. They were at variance with these instructions of the Post-Office Department. They were at variance, as I think we shall show you, with the law under those circumstances. Those bids and bonds, gentlemen of the jury, were sent by Stephen W. Dorsey from the Senate of the United States, and some of the letters that were written by him were written on the official letter-paper of the Senate of the United States. They were sent to postmasters, who, in his State of Arkansas, he regarded as under his control, for postmasters are generally regarded as under the control, in a great measure, of the Senator from the State. He sent them, stating that he desired to oblige a friend. But in each and all of these letters he says, and he underlines it, "Don't let anybody know that these bids come from me; have them

signed; get them signed by sureties; get this surety; do this business; send back these bids with sureties on them, to the responsibility of whom you are to certify, and you are to certify to it before they are complete and filled up; you are to certify to it in violation of the law; you are to certify to it in violation of the instructions of the Post-Office Department. But send them back."

"I am doing all this for a friend!" As Shylock had his friend, so there was a reason why Dorsey had a friend. As a Senator of the United States he could not at that time be interested in mail contracts, or in any other contracts. He was doing it all for a friend. He wanted it done. He wanted them to communicate back to him. But they must, however, keep it secret that he had anything to do with it. Mr. Dorsey found, though, that human nature was better than he supposed. Mr. Clendenning, the postmaster at Fort Smith, wrote to him refusing to do this thing, and calling his attention to the fact that he was asking him to do something that was in violation of the law, and suggested that it might be an oversight. Mr. Dorsey replied, with a good deal of feeling, and substantially told Mr. Clendenning that he thought he was altogether too particular; but, however, that he was operating for a friend, he had seen the friend, and he need not do anything more. Mr. Hadley, the postmaster at Little Rock, did something more; he procured to be executed and certified some, at least, of these bids, and those bids subsequently appeared here in this city. The name of John M. Peck was affixed to those bids subsequently, not before they went to Little Rock, and somebody was put up to personate John M. Peck, who was in New Mexico, to go before the notary and acknowledge that he executed the bond, and that he intended to perform the contract, and everything of that sort which the law requires. Those bids subsequently passed into the Post-Office Department—for the Dorsey combination put in, I think, something over a thousand bids at that letting—and were among the bids which produced the contracts in this case. The dates of acknowledgment, the dates of execution, and all the details upon those bids, are utterly false and untrue beyond all dispute. They were certified by the postmaster without the names being signed to them. They were certified in violation of law, and this was done, gentlemen of the jury, at the request of Stephen W. Dorsey, a Senator of the United States, acting all the time for a friend. And yet acting for a friend, as we shall show you, they got under those bids certain contracts of which Mr. Dorsey, having gone out of the Senate on the 4th of March, 1879, on or before the 1st of April, 1879, Mr. Dorsey appeared to the world as the avowed owner, and entitled to all that might be earned by a considerable portion thereof.

With reference to the bids put in by this combination at that time there are some facts that are noteworthy. As I have said, they put in about a thousand of them. I have mislaid my memorandum of the amount. It will be found on going over the bids that Peck, Dorsey, Miner, almost never, except in one single State—the State of Kansas, where they got no contract—competed with each other. They did not mean to compete with each other, and they did not need to compete with each other, because they were all acting together. Therefore one bid upon this route, and one bid upon the other route, and they did not come in competition with each other.

Another thing is noteworthy, gentlemen, they never obtained a contract for, and I think never bid upon, any route where the service was over three times a week. They never, I think, bid upon any route

where the time was fast. Service over three times a week and fast time presented no opportunities, gentlemen of the jury, either for increase of trips or increase of speed. Of the one hundred and thirty-four routes upon which they got contracts, ninety-eight were contracted for at one trip a week, twenty-four were contracted for at two trips a week, twelve were contracted for at three trips a week. They obtained one hundred and thirty-four contracts, as I have said, and of these one hundred and thirty-four contracts either trips were increased or speed was increased by Mr. Brady upon sixty-eight. Upon twenty-nine of the routes, to do them justice, the amount of pay was, at some stage in the time, reduced. But while the increase on the sixty-eight routes amounted to \$750,000, the aggregate decrease was only \$2,452.96, which, as I have said, took place on twenty-nine routes, and upon those twenty-nine, while there was a decrease of that amount, there was also, either preceding it or subsequent to it, an increase of more than the amount decreased. So that, as the result, twenty of their contracts which were diminished remained diminished, and the aggregate of those twenty so diminished was something about \$20,000 off. They lost \$20,000 from twenty contracts by the progress of railroads cutting off their route, or something of that sort. They gained \$750,000 on sixty-nine routes by the action of Mr. Brady.

Now we shall show you, gentlemen of the jury, that they went into the business believing and knowing, as we say, that they were to get these contracts expedited. The form of subcontract which they had printed contained express provisions upon that subject, and they started out, as soon as they got these contracts, to arrange to sublet them, making all the arrangements as to the division of the percentages in case of increase of trips or increase of speed. Where they had taken contracts below cost, as they had in quite a number of cases, to which fact I called your attention on Friday, there Mr. Brady complacently refrained from declaring them failing contractors until they got up the requisite petitions and machinery which would make some paper justification of Mr. Brady's act in increasing their service. I called your attention on Friday to five cases in which they took contracts that were in this indictment at less than the cost which they had to pay to a subcontractor. I find that among the one hundred and thirty-four contracts which embraced these, there were twenty-two other contracts which they let at a loss [correcting himself]—no, there were eleven other contracts which they subsequently let at a loss. The total loss on the eleven was \$5,290. But on these petitions, by Mr. Brady's orders, they obtained increases to a sum far in excess of that which they lost by the subletting during the brief period. So that there remained of all their contracts five contracts involving the sum of only \$1,460 a year of the one hundred and thirty-four on which they continued to have any loss, while on all these others they were receiving profits. As to sixty-nine of them, as I have already said, they were largely at a profit through expedition.

I called your attention also, gentlemen of the jury, to the fact of their placing subcontracts on file for the full amount in a very large number of cases so as to evade the subcontract law. Perhaps I ought to state, gentlemen, that I find on examination that there were subcontracts made with Mr. Vaile on fifty-six of the routes, and they were subcontracts for the full amount of pay. I am speaking now simply of subcontracts placed on file, and there were subcontracts placed on file in the name of S. W. Dorsey on six of the routes. Of the one hundred and thirty-four routes, if I am not mistaken, forty-six were in the name

originally of John W. Dorsey, thirty-eight in the name of John M. Peck, forty-three in the name of John R. Miner, and seven in the name of a Mr. Watts, who seems to have soon dropped out of their company. He was, or became soon after, a failing contractor on some other route in New Mexico, and he dropped out of that company, fortunately for himself.

Mr. WILSON. Who was that?

Mr. BLISS. John H. Watts.

The COURT. He is dead.

Mr. BLISS. Mr. Peck is dead, they say. I do not know whether Watts is dead or not.

The COURT. Watts is dead.

Mr. HINE. Mr. Joshua Watts, the father of Watts the contractor, is dead. Mr. Watts, the contractor, failed entirely, and they do not complain because he failed.

Mr. BLISS. Mr. Watts I suppose to be alive, and Mr. Peck I suppose to be dead. And yet, until the question with reference to the form of the indictment was raised, somebody, perhaps it is not pertinent for me to say who, has drawn the money alleged to be due from time to time to Mr. Peck, upon the theory that Mr. Peck was still a living man, and the name of Mr. Peck has been signed down to a period long after as it is now stated he was dead, and drawn the money under powers of attorney which were revoked by his death if he were dead.

Now, gentlemen, I have spoken of these defendants as conspirators, and have stated to you in general terms the parts which we suppose the parties played in this conspiracy. Before I go further I ought to say a word to you about conspiracy. Conspiracy, you will understand, to defraud the Government or defraud an individual, or to do any other illegal act, is not usually made by a written contract filed in a public office declaring the intention of the conspirators. It is necessarily and from the nature of the case a secret matter. It is necessarily and from the nature of the case, a thing that under ordinary circumstances when proved is to be proved by an aggregation of separate and distinct facts all tending towards that end. It is not, under ordinary circumstances, a thing that can be proved directly by somebody who was present when it was made; though it is, at times, of course, proved more or less by parties who were engaged in it being willing to make a clean breast of it, and become witnesses for the Government. But from the nature of the case, under ordinary circumstances, conspiracy is to be proved and to be inferred by you from a variety of simple facts constituting circumstantial evidence which brings conviction to your minds that these parties all entered into a conspiracy. At first there may be only two persons engaged in it, and others may be brought in from time to time as their services may be needed, or for any other cause. I think the court will instruct you that all who at any time come into a conspiracy are guilty of that conspiracy.

We shall show you various facts, some of which I have referred to, but a large portion of which I have not time to detail, from which we shall ask you to infer that these parties conspired together, because they will show that they acted in concert to accomplish a common end, and that common end was the obtaining of money from the Treasury; and that money went, in shares, more or less distinct, into the pockets of these defendants; and that being so, we shall ask you to find that these parties were guilty of conspiracy.

Now, in the first place, they all concurred in getting up these bids. Mr. Dorsey sent a portion of them certainly to Arkansas, as I have said,

for execution, or partial execution, in violation of law. The bids, gentlemen of the jury, I think we shall show you, were largely, if not entirely, got up in a third-story room in Mr. Stephen W. Dorsey's house. They were got up there by Miner, Boone, and, I think, J. W. Dorsey. I do not think that Mr. Peck was in the city at any time during the getting up of the bids. The bids having thus been got up, were put in in the names of these different parties, and then the contracts were awarded. After the contracts were awarded, each of these parties treated them as their joint property, as to which either one of them might take any action—do anything.

On the Pueblo to Rosita route, No. 38134, Mr. John W. Dorsey swore to an affidavit for increase as a subcontractor, when he was not either subcontractor or contractor, when under the regulations of the Post-Office Department he had no business to make any affidavit in connection with an increase.

On the route from Trinidad to Madison, No. 38140, Mr. John W. Dorsey did the same thing. He swore as subcontractor, though he was not subcontractor. Miner was the contractor, and Stephen W. Dorsey was the subcontractor, but by a contract not then filed.

On route No. 38145 we find John R. Miner, at the request of Stephen W. Dorsey, writing, as he says, in the absence of John W. Dorsey, to a gentleman to take a contract to carry the mail upon the route.

On route No. 35015, from Vermillion to Sioux Falls, Mr. Harvey M. Vaile makes the affidavit for expedition, though he was only the subcontractor.

On the route from Eugene City to Bridge Creek, No. 44140, Mr. Peck was the contractor. You will find Mr. Stephen W. Dorsey appearing in the case in rather a significant manner, to which I shall soon call your attention.

On route No. 40104, from Mineral Park to Pioche, Mr. John W. Dorsey was the contractor. John M. Peck, in a letter written by John R. Miner, asked permission to sublet, and Mr. Brady conveniently granted it, though, so far as the post-office records show, Mr. John M. Peck and Mr. John R. Miner were equally strangers to that contract. There were other cases in which they were interested one with the other, and, I think, from those facts, and some others which I will show to you, and some admissions made by these defendants, you will have no difficulty in arriving at the conclusion that these contracts, when obtained, were all turned into one common pool and carried out by these parties either individually or under different firm names. As I recollect it, there was a Miner, Peck & Co.; I think there was a Miner, Dorsey & Co., and a Miner, Vaile & Co., and there was a J. W. Dorsey & Co. Various of those firm names seem to have been adopted, and without any great hesitation as to which they should adopt; any one would answer. As to all of these contracts you will find, I think, that at some period of their history the communications are made to the parties—always to this lock-box 714, which was the box which, in December, 1877, Boone had obtained as the box of his 16-year-old stepson—James H. Keitner & Co. Rerdell will appear to you as the common and the facile agent of all these parties, attending to all the business upon all of the contracts, of course aided by the conspirators themselves. Mr. Stephen W. Dorsey will appear to you as a very valuable man in getting up petitions for increase and expedition, and a very valuable man in manufacturing public opinion. But Mr. Rerdell has a capacity, also, in that direction; and the other conspirators—

Mr. J. W. Dorsey had a little hand in that same business, if I recollect right.

Now these contracts having been obtained and made a common pool of in that way, at some time, which probably will be defined by the evidence, there seems to have been a sort of a subdivision. There seems to have been a dividing of them into parcels, and the drawing of lots for these contracts. It seems to have been a division of the parties of their capital in trade instead of there being what there had previously been, simply a division of the profits of the trade. And yet, after that time, they seem to have continued their brotherly and affectionate interest in the business of each other, and to have intervened in it and cared for it very much as before. And they all seem to have been at any time ready participators in any proceedings which, for the benefit of any one, were calculated to take money out of the Treasury.

I have already been talking so long that I have not time, gentlemen, to go into all the details of the evidence. I should weary your patience if I did. I may refer to one single and significant piece of evidence, because it will be brought to your attention and should be carefully stated. The investigations into these frauds were started in May, 1881, soon after General Garfield got fairly seated in his office. It became a matter of public notoriety that they were going on, and then, either through fear or conscience, Mr. Montfort C. Rerdell met Governor and ex-Senator Powell Clayton, of Arkansas, in, I think, the street. Mr. Clayton had been known as an opponent of Senator Dorsey in the politics of Arkansas, and probably, therefore, it was for that reason that Mr. Rerdell sought out Mr. Clayton. He told Mr. Clayton, in substance, as we understand, that he had been cognizant of all these things that I have narrated to you; that he had been the confidential clerk of Dorsey and the other conspirators; that he was satisfied that there was going to be trouble, and that he desired to make a clean breast of the matter, and tell the whole story, and he desired that Mr. Clayton would bring him into connection with the officers of the Government. Governor Clayton, therefore, called upon the Postmaster-General, Mr. James, and stated Mr. Rerdell's desire, and proposed that Mr. James should have a meeting with Mr. Rerdell. Mr. James said that he was perfectly willing to do it, but he would not meet Mr. Rerdell unless in the presence of Mr. Clayton, and of anybody whom he might choose to bring. The appointment was made to meet Mr. James at his rooms at the Arlington, in this city, and Mr. Clayton and Mr. Rerdell came there one evening early in June, at the request of Mr. James. There was present, beside Mr. Clayton, Mr. Woodward, the post-office inspector, who had been chiefly engaged in investigating these frauds, and who had more knowledge of the details than anybody then had, but whose knowledge was infinitely less than that which has since been obtained. At that meeting Mr. Rerdell went on to state, in substance, that he had been the confidential clerk of Stephen W. Dorsey; that he had attended to the business of all of these contractors, and that it was a perfectly well understood thing that they were dividing their profits with Mr. Brady, and that there was a regular schedule on which the division was made; that for increase of speed, which was the large allowance, there was paid to Mr. Brady by the contractors a percentage of either 33 or 40 per cent. of the amount; that in case Mr. Brady remitted fines imposed upon contractors for failure to perform service, he was to have 50 per cent. of the amount; that at the time when Congress, in 1880, was investigating this business, it was believed that the books of Mr. Dorsey and company would be called for, and

that Mr. Rerdell would be the witness required to produce them; that he therefore shammed sickness while time was given to prepare a bogus set of books: that he did not prepare those books, but he gave instructions as to how they should be prepared, marking the entries in the original books which should be changed; that in the original books Mr. Brady appeared as Smith, I think, and that it having been the habit to make small payments to Mr. Turner for his aid to the conspiracy, Mr. Turner appeared there under the name of Jones, if I remember right, or the names may be just the reverse; that when the new set of books were made those items that went in in that way were transferred to other accounts, mostly, I think, "to profit and loss;" that he, Rerdell, had on one occasion gone with Mr. Stephen W. Dorsey to the bank, and that \$7,000 had been drawn; that he had gone with Mr. Dorsey to the door, either of the Post-Office or of Mr. Brady's room at the Post-Office—I will not undertake to say which—Mr. Dorsey stating to him that he intended to pay that money to Mr. Brady, and that he, Dorsey, went in. Rerdell did not claim to have gone in and seen the money paid. I think, substantially, those are the principal features of Mr. Rerdell's statement as made to Mr. James. He produced certain abstracts, what he said were abstracts from the books, or the results of the account. They were examined by Mr. Woodward. Mr. James was very anxious that Mr. Rerdell should see the Attorney-General, Mr. MacVeagh, and it was arranged that he should see Mr. MacVeagh at some time. Mr. MacVeagh was reported to be out of the city. It was arranged between him and Mr. Woodward that if Mr. MacVeagh did not come back, he, Woodward, should write him a letter, signed by an initial, telling him that Mr. MacVeagh had not come back. Mr. Woodward, finding that it was doubtful whether Mr. MacVeagh would come back wrote that letter, but thinking it possible that Mr. MacVeagh might come that night he went to Mr. MacVeagh's house at 8 o'clock, and as he went up the steps there stood Rerdell, having just rung the bell. Mr. Rerdell had in his possession a bundle. When they got into Mr. MacVeagh's house the statement that Mr. Rerdell had previously made to Mr. James was substantially repeated, and this bundle that Rerdell had was opened. He stated it was the letter-book of Mr. Dorsey; that it contained letters in Dorsey's handwriting written by Mr. Dorsey; that it also contained letters written by himself on the business of the conspiracy, and he read to those gentlemen some of these letters which he said were written by Mr. Dorsey. We shall show to you, gentlemen of the jury, that at least one of those letters so read is recognized as a letter received by Mr. Wilcox, in Oregon, in which Mr. Dorsey wrote him saying that he owned the Eugene City and Bridge Creek route, and requesting him to get up petitions, to get articles in the newspapers, to get letters written to Senators, particularly mentioning letters to Democratic Senators Grover and Slater, as early as possible, and giving him a form of affidavit, with instructions not to have any two petitions or letters in the same hand, but stating generally what he wanted, and after going over it in a somewhat rambling letter wound up by a consolidated statement, "Now, I tell you what I want. First, I want this; second, I want that; third, I want the other," going through the whole of that. And under those letters Mr. Wilcox acted; that he manufactured public opinion there, got articles in the newspapers, and got up letters which Mr. Dorsey transmitted to the department as representing the wishes of the people of the locality, and that after a time Mr. Dorsey thought the time had come to cheat Mr. Wilcox as he cheated nearly everybody else under him, as I think you will be

satisfied before you get through hearing the evidence. He refused to pay Mr. Wilcox, and thereupon Mr. Wilcox commenced suit to recover the money, getting service upon Mr. Dorsey in Colorado, at Denver, and from that suit these letters came to the knowledge of the public, and Mr. Dorsey, by his agent, promptly rushed to Denver, paid the entire amount of the claim, received the letters, and either retains or has destroyed them. But parties retain accurate and careful copies, made with the greatest possible care, in some portions even to the tracing of the signature, and those copies we expect to be able to show to you. It is sufficient to say that some of those letters were the identical letters which Mr. Rerdell read from the press-copy letter-book to Mr. James and Mr. MacVeagh early in June, 1881, before any knowledge existed anywhere on the part of the public or the officials that Mr. Dorsey had ever written any such letters.

Mr. Rerdell made various other statements. He said that he could produce papers which would corroborate him; that he was satisfied that there was going to be a great deal of trouble; that he desired that Mr. Dorsey should save himself by doing just what he was doing, and should throw Mr. Brady and the other parties overboard; that he had been long associated with Mr. Dorsey, and that he was going to endeavor to induce him to make a clean breast of it; also that the books which he said were the original books which he kept, and which he said he considered as his own books, were in New York, and that he would go there and get those books and would bring them back; that when he came back he would take those books to the office of the Attorney-General with the other papers which he had, and I think suggested or agreed to the proposition that they should be all placed under seal in the office of the Attorney-General and be there left. Mr. Rerdell had one or two other interviews with either Mr. James or Mr. MacVeagh, or both. He had one or two interviews with Mr. Woodward, and on one occasion subsequently he called at Mr. Woodward's house and left a note for him; and then subsequently had a conversation with Mr. Woodward in which I think I am right in saying religion played a little part, the weight taken off his guilty conscience by having made a clean breast of it, having made him a free man, and he feeling so much better for the first time in many years. A few days subsequent to that Mr. James had occasion to go to New York and he left here on the 3.20 or 3.40 train in the afternoon. On that train he found Mr. Rerdell. Mr. Rerdell had a little conversation with him in which he told him that he was going to New York to get those books; that he was going to carry out his agreement with Mr. MacVeagh, and he was going to see Mr. Dorsey and endeavor to persuade him to imitate his example and make a clean breast of it. They got into New York that night about 11 o'clock. Mr. Rerdell went his way, and Mr. James went his. The next afternoon Mr. James returned from New York on the 3.20 train. He saw Mr. Rerdell on that train also. Mr. Rerdell stated to him that he did not desire to be seen talking much with him, because there was on the train somebody who was in the interest of the star-route crowd, and therefore they had no great conversation until either at Trenton, or whatever was the first stopping-place on the road, the conductor of the parlor car in which they were riding came into the car with two dispatches and called out the name of M. C. Rerdell. Mr. Rerdell went and got the dispatches and read them, and then brought those dispatches and showed them to Mr. James. They were signed either Dorsey, simply, or S. W. Dorsey. The first one said in substance, "Don't let us part in anger; get off at Philadelphia and

come back and we will arrange everything." The other one was in a more appealing mood, and said "For God's sake, think of my family or your family." It was some reference to "family." "Don't ruin my family," or "Don't ruin the family," or something of that sort. "Get off and come back. It will be all settled." Rerdell said that he was not going to do anything of the kind; that he had given his word to Mr. MacVeagh, and that he was going to keep it; and that he had the books with him. Mr. Rerdell's spasm of conscience, or of fear, under certain influences which were brought to bear upon him, and as to which we may or may not present to you some evidence, seems at any rate to have quieted down, and from that time to this nothing has been heard by the officers of the Government of Mr. Rerdell, in the character in which he originally proffered himself, and he is before you, a defendant on this indictment. Mr. Rerdell has, through the public press, undertaken to represent that what he was doing there in these interviews with Mr. James and Mr. MacVeagh—and I do not know exactly what part in the thing the Dorsey dispatches played—was in playing a decoy, or to get evidence, or something of the kind from the Government. And yet all these gentlemen will tell you from beginning to end that Mr. Rerdell was seeking no information from them; that he asked nothing, did not manifest the least disposition to get anything, but that he was giving them information and evidence bearing upon these cases.

Now, that is the confession of one of these conspirators. As to that, I think the court will instruct you that a man's confession that he has been guilty of a crime is evidence against him, though that crime is conspiracy, just as much as his confession of any other crime; that moreover in conspiracy when you become once satisfied that certain persons are engaged, then the act or declaration of any one of them made while engaged in that conspiracy is also evidence against all the others. Therefore, if you become satisfied from other evidence or from all the evidence that at the time of Rerdell's confession the conspiracy was then still in progress, then the statements of Mr. Rerdell will bind them all. If it was a conspiracy that was over, if he was narrating merely, then it would not bind anybody, probably, but himself. That, however, is a matter upon which the court will instruct you at the proper time. But I say with entire certainty that, in any event, the confession of Mr. Rerdell, unless you find the very absurd story that he was making it up for the purpose of playing detective is true, binds him and convicts him of being engaged in a conspiracy to defraud the Government, and that conspiracy must have been with some one. If Mr. Rerdell should give us the pleasure of cross-examining him we may, perhaps, be able to throw a little more light upon this transaction. But besides Mr. Rerdell's confessions, we shall place before you, gentlemen of the jury—and I ask you to remember this—the distinct admission of Mr. Brady that he did receive money not only from these contractors but from others. And we shall give you confirmatory evidence upon that subject, and we hope to convince you, beyond all dispute, that Brady did not do this dirty work which took from the Treasury large sums of money, as I explained to you on Friday, from the mere desire to occupy his idle hands, but he did it corruptly. We hope, I say, to prove to you, gentlemen, because we believe that proving it in that way there will be no question that you will put, by your verdict, such a seal upon Mr. Brady's acts as will prevent him, at least for a time, from defrauding the Government, and will deter others from seeking to do it.

Now, gentlemen, I have gone over in considerable detail the general outline of what we expect to prove upon this conspiracy, and I have, of course, referred more or less in detail to the specific routes; but it may, perhaps, conduce to the orderly arrangement of the proof, and to the bringing the matter together in your mind a little, if I briefly state what specific facts we expect to prove as to each of the routes in this indictment.

Route 34149, from Kearney to Kent, was let as a hundred and twenty-five miles, the service to be once a week. John M. Peck became the contractor at \$868. On the 24th of September, 1878, within three months after the contract was made, the town of Fitzalon was added by an order retroactive to take it back to the 1st of July, it being claimed that fifteen miles were added to the distance, and there was allowed to the contractor \$112.24, when in point of fact we shall show you that the addition of Fitzalon did not add a rod to the distance.

On the 10th of July, 1879, one year after the contract was let, three trips were added over a portion of the route, the route having been one hundred and twenty-five miles from Kearney to Kent. Three trips were added on a portion of the road between Kearney and Loup City, seventy-five miles, and for the addition of these three trips there was added to the contractor's pay \$1,122.24. At the same time the service was reduced to thirteen hours, and there was added \$2,200 to the contractor's pay for that, which addition made, at that time, \$3,322.24, and carried up the total pay to \$4,302.48, when the contract had been let at \$868, and when the total receipts from the route were \$394. As the best evidence in the world that the expedition and increase of trips were not needed, the revenues of the post-office on that route decreased after the increase of expense.

Mr. WILSON. What is the amount of the revenue?

Mr. BLISS. Three hundred and eighty-one dollars and ninety-four cents is the average yearly revenue for three years. Now, on that route a Mr. French became the subcontractor at \$700, when there was one-trip service, thus giving Peck a margin of \$168 of profit. When it was increased in July, 1879, to three trips, the contractor got \$1,587.40—I mean the subcontractor, French, received \$1,587.40, and the contractor \$2,715.08. I shall place Mr. French before you, gentlemen. Of course he had to know that the trips were increased, and he made his increased trips. But he will inform you that he never knew that the service was expedited until the post-office inspector, less than a year ago, going out into that country to investigate the facts, informed him for the first time that the Post-Office Department was paying for an increased rate of speed over that which had existed under the original contract. The fact was, gentlemen, that save in very bad weather that mail was always carried over that route in less than thirteen hours, if I am not mistaken. I believe I am right. Thirteen hours was a close fit, and therefore in bad weather it took longer than that. Mr. French considered that he had a right to take longer than that, and he could not understand how it was that the contractor, when he came to get his pay, was from time to time taking money from him for not having got around in time, and he considered himself very badly used. Now, the fact was that by Mr. French's subcontract they had provided that if there was any increase of speed Mr. French was to have 65 per cent. of the amount. I think that was it. They had got this increase of speed, but instead of living up to their contract with Mr. French, and giving him his 65 per cent., they pocketed the whole of the money, and never told him that the Government

was paying anything for any increase of speed. Upon that route the affidavit for expedition was made by Mr. Peck, the contractor. Though the expedition was obtained on the 10th of July, 1879, it appears the proceedings to obtain it must have been initiated, if Mr. Peck's affidavit is properly dated, a good deal earlier, for it was on the 1st of February—only seven months after the contract commenced—that Mr. Peck swore to “carry the mail three times a week on the present schedule between Kearney and Loup City takes three men and four animals. To carry it in thirteen hours will take six men and fourteen animals.” Mr. French will tell you that he employed two drivers, one stock tender, and eight animals to carry it three times a week, and that was all he did employ, and that on the old schedule he would have employed two drivers, a stock tender, and six animals. Therefore Mr. Peck, when he stated that it took two men and four animals understated the amount required, and cheated the Government in that way. Mr. Peck overstated the number that would be required to perform it on the increased schedule, and cheated the Government in that way. This subcontract with French, was made by J. W. Dorsey as the agent of Peck. Mr. Vaile became the subcontractor from the 1st of July, 1879. The address is to the care of John R. Miner, lock-box 714. This is the route, gentlemen, upon which I told you that the petitions had been altered; that they did not contain anything about expedition; that at the end of a paragraph in a handwriting entirely different there is inserted in the petition a request for expedition for thirteen hours; that we believed that the handwriting would not have been different if the original petition had not accidentally got injured, so that the parties in Nebraska had to rewrite it; that we should show to you by the evidence of the parties who circulated the petition, that when it was sent to Washington it did not contain the thirteen hours; that it was sent to Senator Saunders, of Nebraska, and by him indorsed to the Post-Office Department; that it did not then contain the thirteen hours, and that now it is found that the thirteen hours are there, a barefaced forgery, obvious to the eye of every person who examines it. Now, that is the history of the rascality upon that route. And let me here, gentlemen, call your attention to a few figures, because I desire to read what has been said as to some facts connected with that.

Mr. Brady has heretofore claimed that the Congress of 1878 added two thousand new post-offices; that they put service upon one thousand three hundred of them, and that they did not put service upon the others for want of money, and for want of time. But how as to this point of money? Let us look at it. Does anybody believe that the Second Assistant Postmaster-General of the United States seriously believed that \$3,680.10 could be more profitably invested in curtailing the time four hours between Vermillion and Sioux Falls, a distance of seventy-three miles, in the Territory of Dakota—

Mr. WILSON. What are you reading?

Mr. BLISS. I am glancing at, not to repeat the same words, a report made to the Post-Office. I am stating my own version.

Mr. WILSON. What are you reading?

Mr. BLISS. It is the report of Mr. Freeman, the Assistant Attorney-General for the Post-Office Department.

Mr. WILSON. When was this made?

Mr. MERRICK. He is not reading it. He is making his argument.

Mr. BLISS. I am making my argument.

Mr. WILSON. Read it.

Mr. BLISS. [Reading:]

Can it be supposed that the Second Assistant Postmaster-General seriously believed that \$3,680.10 could be more profitably invested in curtailing the time four hours between Vermillion and Sioux Falls, a distance of seventy-three miles, in the Territory of Dakota—

I do this, gentlemen, for the purpose of calling your attention to how money was wasted, in order to show how it could have been used if it had been properly used—

than in putting six times a week service on one hundred and ten miles, or three times a week on two hundred and twenty, or once a week on seven hundred miles of new route. And yet this was the result.

Taking the average pay per mile of the department, that money that was used in saving those four hours would have given the inhabitants on some of these new post-routes, extending over an aggregate of seven hundred miles, service once a week. And does anybody believe that the advantage to the people would not have been greater in getting that service than in just curtailing four hours of the service of the Territory of Dakota? Seven hundred miles of mail route were left unsupplied in order that the mails might be carried from Vermillion to Sioux Falls, seventy-three miles, in ten hours instead of fourteen.

Now, then, let us take route 38135, from Saint Charles to Greenhorn. It was thirty-five miles long, as let on a period of twelve hours. It ought to have been advertised as from Pueblo, because at Saint Charles there never was anything but a water tank on a railroad. It was only in fact thirty-five miles from Greenhorn to Pueblo. Indeed it was only thirty-two, but call it thirty-five. The attention of the Post-Office Department was called to that fact before the contract was entered into, as early as the 15th of December, 1877, before the bids were received, and the postmaster, I think it was, wrote to the Post-Office Department that if they persisted in that advertisement he did not see how the mails were ever to get to Saint Charles, for it had none of its own and he did not see how the mail was to get there, and the route ought to go to Pueblo. They nevertheless persisted in advertising it as thirty-five miles, beginning at Saint Charles, and then promptly after the contract was made they extended the route to Pueblo. They added twelve miles as the nominal distance, making the distance as allowed the contractor from Pueblo to Greenhorn forty-seven miles, when it really was only thirty-two, and they allowed him four hours' additional time for going those fictitious twelve miles. Therefore, though the contract was let at little less than three miles an hour, after they had nominally put in this twelve miles and allowed him sixteen hours for doing it, the rate of speed was a little over two miles an hour, an arrangement, gentlemen, which made it very easy to have expedition. The contract was let for twice-a-week service at \$548 a year. It was all the time afterwards paid for, as I said, as forty-seven miles long instead of thirty-two. An inspector of the Post-Office Department reported on the 18th of July, 1878, that the route ought to be extended to Pueblo, but that no allowance ought to be made for the additional distance, because the distance would then be less than the distance advertised, but no attention was paid to his report. On the extension from Saint Charles to Pueblo \$320.80 were added to the contract price, making the contract price then about eight hundred and sixty-odd dollars. On the 6th of October, 1878, one Ames became the subcontractor at \$612, so that the contractor was getting then about \$200 profit.

I have here, gentlemen, some maps showing the routes, and so forth,

or what we suppose to be taken from geography as showing the routes; but I do not know that upon this route I need to call your attention to them. [Indicating on map.] Here is Pueblo; there is Saint Charles; there is Greenhorn; here is the water-tank at Saint Charles, the route started from there. Down to there is advertised, and then it went from there. I may say to you, gentlemen, that in the progress of the trial we shall seek to place in the hands of each jurymen what we believe to be a correct map of each one of these routes.

Now, the service having been carried up to \$860, of which \$612 went to the subcontractor, it was on the 14th of July, 1879, increased from \$860 to \$3,945.60, and by the application of the geometrical ratio consequent upon their mode of calculating expedition, that twelve miles (which was added as the nominal distance between Saint Charles and Pueblo, when, in point of fact, that addition did not add a foot), which was originally \$328.80, was made, when the route became expedited, to cost the Government \$1,479.60 a year. The mere fraudulent addition on paper of those twelve miles as an increase of distance from Saint Charles to Greenhorn, in the face of the protest of the postmaster and of the post-office inspector, cost the Government \$1,479.60 so long as Thomas J. Brady remained Second Assistant Postmaster-General. There could have been given, gentlemen, over that route, instead of twice-a-week service, for the same money, paying at the same rate, six times a week to the people of that locality. Have you any doubt that the people of that locality, if they wanted any additional mail service, would have been better gratified by having service six times a week instead of twice a week, than they were in having the speed of the mail that went twice a week expedited two or three hours in the course of the day? I am wrong as to the time that was reduced. The time was reduced from sixteen hours to seven. But for the reduction from sixteen hours to seven they could have had service six times a week. Instead of that, they got service only twice a week. That expedition was obtained on the affidavit of John R. Miner, sworn to on the 7th of April, 1879, that on the sixteen-hours schedule it took one man and two animals, and that when reduced to seven hours it would take four men and seven animals. In fact, it took but one man and two animals to perform the service after it was expedited, and before it was expedited it took but one man and two animals. We shall place before you the subcontractor who performed the service, and he will tell you those facts. Now, on that route which had been expedited so as to cost the Government \$1,479.60, service was performed during the entire time by two subcontractors, one of whom got \$840 and the other one \$900, and Mr. Miner and his associates sitting here in Washington got from the Treasury \$3,900, and paid \$900 to the man who did the work—got it, gentlemen, from the Treasury, on an affidavit, with a false oath, as false as any oath that ever was made; got it on an affidavit on a route that was expedited by Thomas J. Brady, who accepted the affidavit as conclusive of the fact, when the telegraph, in three hours, would have told him it was a lie, and when his own inspectors, or his postmasters, in five days, would have told him it was a lie. In point of fact, gentlemen, the time over that route never was changed. There was never any expedition obtained. It was paid for, but not obtained.

On the 1st of December, 1880, there came in another petty steal. The town of Agate was added, and \$369.90 was allowed to the contractor for adding Agate. No mail ever went to the town of Agate on that route. We will place before you the postmaster at that place at that time, and he will tell you so. It was so barefaced that a month afterwards, on the 1st of Janu-

ary, 1881, that order for the mail to go to Agate was countermanded, but they allowed the contractor a month's extra pay for the injury that was inflicted upon him by relieving him from service upon a portion of the route where he never had performed a day's service. By that little steal there was two months' pay got out of the Treasury and nothing rendered for it. Of this route, too, gentlemen, Mr. S. W. Dorsey is the subcontractor of record. The address was first to lock-box 714, and afterward to the care of M. C. Rerdell, lock-box 706—I mean the official address.

Expedition even if it had been obtained on that route, gentlemen, would not have expedited it. The mail reached Greenhorn at 2.30 p. m., in theory, and it reached Pueblo at 2 p. m., leaving each place in the morning and arriving in that way. Pueblo is the connecting point of two branches of the Denver and Rio Grande Railroad. The mail left Pueblo in the morning, went to Greenhorn and reached Greenhorn at half past 2 under the schedule of expedition, and left Greenhorn in the morning and reached Pueblo at 2 o'clock in the afternoon. Now, if it was of value to the inhabitants upon that route to have a mail go so fast that it must arrive at Pueblo at 2 o'clock, and it would not suit them to have it arrive there at 6 or 7 o'clock, it must have been, gentlemen, because there was a desire to communicate with some point beyond Pueblo. In other words, the people out there may naturally have desired to communicate with the east by the railroad, and the mails leaving Pueblo should have so connected—or possibly to the north, Denver, or to the west. They desired to communicate somewhere; and yet that mail was expedited to arrive at Pueblo at 2 o'clock in the afternoon, and every mail that went out of Pueblo that day left Pueblo at half past 1 in the afternoon. Therefore, the mail was expedited seven hours to reach Pueblo and lie over twelve hours; and for that expedition there was paid out of the Treasury \$3,100 a year. Upon that route, gentlemen, thus bristling with illegalities and fraud, the only offices were Greenhorn and Muddy Creek other than Pueblo, which, of course, was a large point and had considerable mail business, to which this route contributed somewhat. You will see how much it contributed. The revenues of Muddy Creek post-office were \$19.08; the revenues of the Greenhorn post-office were \$145.72, making an aggregate average revenue of \$164.80, I think. Now, further upon that route, one of these petitions has an insertion of a request for expedition which simply says, "In quicker time." Four of these petitions were transmitted on the same day by John R. Miner. They are all on the same paper, in the same wording, and two are in the same handwriting.

Route No. 41119, from Toquerville to Adairville, was let as one hundred and thirty-two miles long, sixty hours time, once-a-week service. John M. Peck was the contractor, at \$1,168 a year. Before the service commenced the address was changed to the care of M. C. Rerdell, lock-box 714. On the 8th of March, 1879, Vaile became a subcontractor by a contract dated April 1st, 1878, way back before the commencement of the service—a contract made by John R. Miner, as attorney for Peck. That contract was withdrawn on the 8th of May, 1879, two months afterwards, and a subcontract with Rerdell was put on file, which was, in like form, dated on the 1st of April, 1878. So that there were two subcontracts made on the 1st of April, 1878, one with Miner and one with Rerdell, giving to each of them the whole of that route. One went on file and staid there two months in 1879, and then the other went on file. That contract of Rerdell's, dated on the 1st of April, 1878, specifies the pay on the route as \$3,504, when in point of fact, instead of that having been the pay on the 1st of April, 1878, no human be-

ing knew or could honestly know that there was to be any such pay as that upon that route until Mr. Brady, on the 10th day of November, 1878, six months afterwards, made the order which carried the pay up from \$1,168 to \$3,504. How did Rerdell, how did Miner know, when, on the 1st of April, 1878, they made a contract by which Rerdell was to have the full pay, specified as \$3,504, that Thomas J. Brady would, on the 10th of October subsequent, make an order putting it up to that precise sum? Was it a prearrangement with Brady by which he was to do it, or was Brady compelled to fix the amount at the sum they had put into their subcontract? On the 8th of May this contract of Rerdell's having gotten on file, on the 9th of May, for fear the original direction to the care of M. C. Rerdell would not do, they gave another direction to the Post-Office Department to be sure and address everything to the care of Rerdell. On the 12th of April, 1879, Rerdell, being the subcontractor at the full amount, writes as an agent for Peck, the original contractor, to one Nephi Johnson, a subcontractor out upon that route, to get up petitions, and have them numerously signed, and he gave him a precise form in which petitions were to be gotten up, and told him, "This is the general form. Do not use the precise language. Give as many reasons as you can for increasing it. Get letters to the Postmaster-General and your Delegate, and do generally all you can." On the 10th of July, 1879, John W. Dorsey, who has, wonderfully, some interest in this thing, writes to the same effect. He incloses a petition and wants to have Johnson get it signed, and then send it to Mr. Cannon, the Delegate from Utah. On the 5th of May, 1879, between the letter of Rerdell, asking that petitions be gotten up, and the letter of John W. Dorsey to the same effect, Mr. Stephen W. Dorsey wrote to Johnson urging him on in the good work, and promising and guaranteeing that he, Stephen W. Dorsey, would be personally responsible for his pay under his contract, which you will bear in mind was not on file. John W. Dorsey went out there about the time that he wrote the letter, and there he had an interview with Mr. Johnson, and he told Mr. Johnson that Stephen W. Dorsey, John M. Peck, and John R. Miner were the members of the combination, and that they had great influence in Washington. Gentlemen, have you any doubt that Mr. John W. Dorsey spoke the truth? Unfortunately on the 5th of May, 1879, Stephen W. Dorsey wrote him and inclosed a new contract which Johnson was to sign. Dorsey said he wanted it signed because of the dissolution of the firm. Some firm in which Stephen W. Dorsey was a partner had managed to dissolve on the 5th of May, 1879, within two months after Stephen W. Dorsey went out of the Senate of the United States; and he will ask you to believe that though he sent out the bids on which the contracts were obtained, to have them fraudulently signed, and though they were made up in part, if not in whole, in his house, that he had no interest in the contracts until after the 4th of March, 1879, when he apparently got into some kind of a firm which dissolved within less than two months afterwards.

In October, 1878, we come to the climax of this thing, the end to which all seemed to tend. Then two trips were added; on the 8th of July, 1879, four trips were added. In the first instance \$2,336 were added, and in the latter instance \$4,672 more. At the same time, July 8, 1879, as the result of these efforts that Rerdell and John W. Dorsey and Stephen W. Dorsey had been making, the order came not only to add four trips, but to reduce the time from sixty hours to thirty-three hours, and they added for that \$12,718.22. So that the original contract for \$1,168 got up, in the brief period of a little over twelve months from the time it was entered upon, from \$1,168 to \$20,892.22. Of that sum the

subcontractor got \$8,444, and these conspirators got \$12,450.22 for doing nothing—I mean nothing legitimately.

But, gentlemen, that is not all the steal here. The increase of trips and expedition was to take effect on the 1st of August. In the June previous the terminal post-office had been discontinued, and therefore on the last twelve miles of the route there was no place to go to. So it was chopped off; and on the 8th of July having added expeditions, on the 14th of July they deducted ten miles of service, and directed that that deduction should take effect on the 1st of August, the same day when the expedition took effect, and then they conveniently provided that there should be allowed to the contractor, in consequence of the injury inflicted upon him by the loss of ten miles of the route, not the pro rata pay—they are fond of pro rata when against the Government; it was not to be the pro rata pay as it was at the time when the order was made—but the pro rata pay as it would be after the \$12,718 had been added. In other words, there was not to be a minute of expedition until after the 1st of August, and on the 1st of August ten miles was to be taken off, and they were to give the contractor the allowance for those ten miles, based upon the increased pay, and so instead of basing it upon the former price they put it on the basis of \$20,894.

Now, in June, 1879, that expedition was obtained on the affidavit of Mr. Peck dated in January, 1879. As early as the 20th of January, 1879, Mr. Peck knew that that route needed expediting; he thought it would be expedited, and he knew to just how many hours it would be expedited. Brady, on the 8th of July, 1879, made an order expediting it from sixty hours to thirty-three hours; and on the 22d of January, 1879, six months previously, Mr. Peck swore to an affidavit in which the statement is as to how many men and animals it would take to do the service at the existing speed of sixty hours, and how many at the reduced speed of thirty-three hours. Mr. Peck knew as early as January, 1879, that Brady would, in July, 1879, want to know how many men and animals were necessary to perform that service, not in forty hours or twenty-four hours, but in the round sum of thirty-three hours. Peck swore that to perform the service daily in sixty hours it would take three men and six horses; and to perform it in thirty-three hours it would take five men and eighteen horses. That is an increase of one and fifty-five one-hundredths per cent. In point of fact, on a sixty-hour schedule it would take four men and ten horses; with thirty-three hours it would take seven men and fifteen horses. That expedition having been made in July, 1879, the postmaster reported, in December, 1879, that it was impossible to make the expedited time, that the people along the route did not care for it, and, innocent man, he says, "If it costs the Government anything I should think it should be discontinued." If it cost the Government anything! Previous to that, in November, 1879, he had given in less definite language the advice that the service should be restored to sixty hours; but no attention was paid to him. This, gentlemen of the jury, is the route on which I told you that Mr. Dorsey, having made a contract with the subcontractor, by which the subcontractor should do the service for \$8,444, while the contractor got \$12,450, wrote, "It brings it nearer pro rata than any trade I have made since I left home." Bear in mind that the subcontractor must stand all fines and deductions. His amount is subject to deduction and the amount the contractor receives is not. So here was the subcontractor receiving \$8,444, while the contractor got \$12,450 net.

This petition, which was sent to Johnson with the form and everything ready for execution, or a similar petition, was filed in the de-

partment on the 25th of June twelve days before the order for expedition was made. We shall show to you that upon one petition not exceeding seven out of a large number of names are of persons who ever have been known to have lived upon the route, one at least of whom was dead at the time the petition was sent here. We shall show to you in that same connection that there is another petition bearing the names of nobody known to have lived upon the route, and that one petition asked for a reduction to forty-eight hours, and that that has been used as the basis of an expedition of thirty-three hours. I ought to say to you, gentlemen, that in this affidavit of Peck, in which he stated the reduction should be to thirty-three hours, all figures are over erasures. Either Peck knew in some way on the 1st of January, 1879, that Brady would want the figures for a thirty-three hour schedule, in July, 1879, or else the affidavit sworn to in January, 1879, was altered over those erased figures to make it conform to the time which had been arranged for with Brady.

This expedition was obtained in July, 1879, on the 3d day of April, 1880. Mr. Johnson, the subcontractor, had some little time previous to that sent to the Post-Office Department, through Delegate Cannon, a remonstrance by all the postmasters on the route, saying that thirty-three hours was unnecessary, if not impracticable, and recommending a restoration, as I remember it, to sixty hours. Having sent that to Mr. Cannon, the Delegate, to be presented, Mr. Cannon apparently did his duty and presented it. Because on the 3d of April, 1880, Mr. Rerdell writes to Mr. Johnson, "We have increased your pay \$1,556," a liberality which I think you will find nowhere in the transactions of these parties, unless they were going to gain something by it. He immediately showed what he expected to gain. "We make this allowance in order to have the service remain as it now exists. We understand you have been sending letters to your Delegate asking to have the time restored to the old schedule. We want you to write to him to withdraw the letters. We should lose money if the service was changed back. As it is"——

Mr. TOTTEN. [Interposing.] Are you reading from a letter?

Mr. BLISS. I am not, sir.

Mr. TOTTEN. Have you a copy of it?

Mr. BLISS. I have not.

Mr. TOTTEN. It sounds very much like it.

Mr. BLISS. I have been through these papers so much that I have got them pretty well in my memory.

Mr. TOTTEN. I wish you would state all of them instead of picking out one.

Mr. BLISS. You will get all of them quite as soon as you want them.

Mr. WILSON. We certainly intend to have them.

Mr. MERRICK. You need not be afraid of that.

Mr. BLISS. [To Mr. Wilson.] You need not fear but what you will get them. [Continuing his address to the jury.] Mr. Dorsey says "we will lose money if it is taken off. As it is we make a small profit." The subcontractor \$8,000; the contractor \$12,000 net! "As it is we make a small profit!" Then there was another letter written by Rerdell on the 9th of May to Johnson, in which he still wants him to have his Delegate withdraw the petition; and some how or other the paper has, I believe, disappeared from the files of the department.

Now, Mr. Dorsey, when he was out there, as I told you, told Mr. Johnson that himself, Stephen W. Dorsey, Peck, and Miner were members of the combination. He further told them that they had two hun-

dred contracts, and a great deal of influence in Washington, and that Brady was "a very fine man." He told them when they were sending out petitions for increase, "we have got to work together." That is the Toquerville and Adairville matter. It was a little venture apparently for the benefit of our friends in Utah to convince them how much more honest and straight the believers in the Christian religion are than those benighted people out there.

Route No. 31145, from Garland to Parrott City, two hundred and eighty-eight miles, was let for seven days in time, service once a week. Mr. J. W. Dorsey was the contractor, and the amount the Government was to pay was \$2,745. On the 18th of June, 1878, the inevitable lock-box 714 appears as the address of Mr. J. W. Dorsey. On the 1st of October, 1878, the subcontract of Mr. J. H. Watts appears on file. Mr. J. H. Watts was to have 50 per cent. of all expedition money; so that as early as October, 1878, they were looking for expedition. On the 1st of January, 1879, the subcontract of one Joseph appears on file—or rather was made but was not, I believe, filed. On the 27th of September, 1879, the subcontract of Jaramillo, for \$6,200, appears on file. On the 30th of January, 1880, the subcontract of one Sanderson, for \$8,000, appears on file. On the 10th of June, 1878, this gentleman who had no interest in the contract, Mr. Stephen W. Dorsey, writes and asks a daily route and a fast schedule, and calls attention to the fact that there is an error in the length of the route as advertised. On the 22d of December, 1878, Mr. Miner, in the absence of J. W. Dorsey, writes, as he says, at the request of Stephen W. Dorsey to one Anthony Joseph, asking him to stock the route and run it. Mr. Stephen W. Dorsey was a personal friend of Mr. Joseph, and he wrote later to the same effect. Early in 1879 Mr. Rerdell called upon Joseph out in New Mexico, and made a contract with him. On the 9th of April, 1879, Mr. S. W. Dorsey sends to Joseph forms of petitions to be gotten up and to be signed by the people generally around there, with full instructions as to what was to be done, and in the course of it he tells him, either in that or a subsequent letter, "I will guarantee your pay." That is the record of the interference of the different people with this contract. On the 26th of June, 1878, before the service commenced, before a pound of mail had been carried over the route, eleven miles were taken off the route, and they allowed a month's extra pay to the contractor, although he ought not to have received anything. By this cutting off the route was reduced to \$1,639.44. On the 23d of January, 1879, there was a further reduction, which brought it down to \$1,467.78. That was the last of the bad luck of the conspirators upon that route; the amount began to increase after that. On the 24th of April, 1879, twenty miles were added for the supply of Pagosa, and that order was made retroactive so as to take effect back on the 1st of July, 1878, in violation of the law. That carried the amount up to \$1,658.40. Having accomplished that, and got the route in that form by the end of April, on the 12th of May comes expedition. Two trips were added, and \$3,316.80 for them. It is reduced from ninety to fifty hours, and \$8,457.84 was given for that. Then, finally, on the 5th of January, 1881, it is carried up to seven trips and \$17,910.72 added, making the total upon that route \$31,343.76, where the original amount was \$2,745 and one hundred and sixteen of the two hundred and eighty-eight miles of distance stricken off. There were left one hundred and seventy-two miles of a route originally consisting of two hundred and eighty-eight miles, and originally let for the sum of \$2,745 for the whole route, which was carried up to \$31,343.76 for the part. That

was, gentlemen of the jury, having "due regard to productiveness" in the increase. The average receipts on that route were \$194.96. They were just about on the entire route what was added on to the original schedule for Pagosa Springs.

Now, of the amount when expedition was put on and service carried up to only three trips, the aggregate allowance by the Government was \$13,433.08. Of that the subcontractor got \$6,200, and the contractor Dorsey and his associates got \$7,200. When it was carried up to \$31,343 the subcontractor got \$10,666, and the contractor the round sum of \$20,000. At some stage in this proceeding there seems to have been a good deal of irritation in the history of this route. The contractor, it seems, Mr. Joseph, found he was running behindhand, and he seems to have made some protest, and, thereupon, Stephen W. Dorsey, in June, 1879, writes him an indignant letter telling him to stop writing the department, and that if he has any communications, to make them to him. Then, by and by, they break Mr. Joseph's contract and make a new contract with this man Jaramillo (I think I am right). Thereupon, they write Mr. Joseph an indignant letter, and tell him that they are going to make him responsible for the additional sum which they have to pay Mr. Jaramillo for carrying out the service over what they agreed to pay Joseph; that he had not lived up to his contract, and they proposed to hold him for it. Mr. Rerdell wrote him this letter. In point of fact, I think it will appear to you that they were paying Mr. Jaramillo \$1,200 less than they had agreed to pay Mr. Joseph. They were really saving \$1,200 by the failure of Mr. Joseph to fill his contract with them, if my recollection is right, though perhaps I am mistaken.

Now, this expedition was obtained on the affidavit of J. W. Dorsey stating in detail the necessity for an increase of men and animals of 170 per cent. The petition for the increase was for an increase over a small portion of the route. The petition for increased trips was for seven trips over a small portion of the route. Yet Mr. Brady took that petition for an increase over a small portion of the route, and ordered an increase to seven trips a week upon that route where the average annual receipts were less than \$200.

Mr. Brady ran this route up from \$2,749 to \$31,000 in the face of the following record: On the 16th of July, 1878, the postmaster at Animas City, one of those points from which the petition was for the most service, charged that the route was of no use whatever. The postmaster's letter was indorsed by Mr. Turner, and I think when we come to give it in evidence you will see it was made to say something very different from what it did say. On the 25th of April, 1879, the contractor wrote Mr. Brady that the service could not be performed in the time provided, one hundred hours. He had seven days to do it originally. On the 31st of May, 1879, the postmasters at the terminal offices wrote that though an increase of trips was proper the expedition was not needed, and that it could not be done in the time given, and at least six days should be allowed. That letter immediately followed the granting of expedition, and was consequent upon the sending of a schedule to the postmasters to fix a time as between several stations with a limitation that they must not make it in excess of the time to which it had been reduced, fifty hours. They replied it could not be done in fifty hours, and they sent back a schedule which fixed six days, as I recollect it. On the 28th of June the distance circular was sent back again by Brady calling for fifty hours, and the postmasters again reported that it could not be done, and they added to their indorsement that it was a route of mere local importance; and the circulars went back and forth down to October, the postmasters in-

sisting upon it that the time could not be done, and refusing to make schedules for the purpose, and Mr. Brady returning them saying that the time must be done. Then one of the postmasters wrote a letter, saying that it might be possible to get it down to five days, but that even that time could not be made in winter. Still Mr. Brady insisted upon having it at fifty hours. Why? Gentlemen, all the fines and deductions were to come off of the unfortunate subcontractor who had undertaken to do the business for \$10,666.64; and until that money was eaten up by fines and deductions, of course, Brady could insist upon this impracticable schedule and the contractor could sit here quietly in Washington and draw a little over \$20,000 a year. If the fines and deductions amounted to more than the entire sum to be paid the subcontractor, then the contractor would be concerned, but not until then. Do you wonder, gentlemen of the jury, that Mr. Jaramillo fell under his load and could not carry out the contract in that way where there was an impracticable schedule which he was required to perform?

Mr. WILSON. Allow me to suggest that it is now half past twelve, which was the time fixed for recess.

Mr. BLISS. There are a few more points with regard to this route which I would like to mention.

Mr. WILSON. I simply make the suggestion for your benefit.

Mr. BLISS. I will be glad to accept it in a few moments.

I think I am right in saying that this is the route on which it will appear that the unfortunate subcontractor, having been subjected to these fines and penalties and deductions from his own pay, and having paid \$500 to be let off from his contract—that after that transaction was done the contractor turned around and got the department, or got Mr. Brady probably, in consideration of the 50th per cent. that Mr. Rerdell said he got in such cases, to remit the fines and penalties, and they quietly kept those fines and penalties which had been deducted from the subcontractor's pay and put them in their own pockets. I think I am right in saying that it was upon this route. It is certainly true of one of the routes.

At this point (12 o'clock and 30 minutes p. m.) the court took a recess for half an hour.

AFTER RECESS.

Mr. BLISS resumed his address as follows:

GENTLEMEN OF THE JURY: During the recess my attention has been called to the fact that I probably did not correctly state one or two things in connection with the closing route that I mentioned. Upon that route Mr. Sanderson, from the time he became the subcontractor, did receive the increased amount of money, and therefore it did not go to the contractors as I stated. My memorandum was rather full, and I got a little puzzled in reading it. There is another question as to the payments to Mr. Joseph on which I think I probably was not quite accurate, arising from the fact that under the contract with Mr. Joseph there seems to have been some doubt in the minds of all the parties as to the length of the route, and they agreed with him that if there should be a difference in the distance discovered, then his pay should be regulated by the difference in the distance; that there should be a rule of three stated as to that, and there was one apparently stated which ran in this way: as two hundred and sixty miles is to one hundred and sev-

enty four miles (the amount finally allowed) so is the gross sum allowed to Joseph under his contract to the amount to be allowed after the correction of the distance. The result of this was to take from Joseph some 25 per cent. of the pay that otherwise would be allowed him, but to justify the claim that he got more than Jaramillo. I do not think there is anything in these corrections which affect the argument I addressed to you. Still, inasmuch as I desire to be strictly accurate, I refer to the matter.

On route 38150, from Saguache to Lake City, ninety-five mile long, which was let at thirty-six hours in time, three trips a week, for \$3,426, John R. Miner was the contractor. On the 20th of September, following, within less than three months after the service commenced, four trips were added at an expense of \$4,568, and the time was reduced from thirty-six hours to twenty-four hours, which carried an allowance of \$15,437.12, making \$20,205.12 which was then added, which with the original pay carried the amount up to \$23,431.12, the original amount having been \$3,426. The average receipts of that route for three years were \$1,090.77. Here we find a peculiarity. I don't know that it occurs to the same extent anywhere else, but it clearly shows Mr. Turner's usefulness to the conspiracy. It was he who went through the arithmetical calculations under which Brady, having decided to allow expedition according to the amount stated in the affidavit of the contractors, prepared the order. Accepting the basis of the contractors' statements, the only basis that Mr. Brady operated upon, and applying the most liberal estimates that could be made, Mr. Turner, by his indorsement and his calculations, allowed for expedition \$4,368.55 more than could properly be allowed. That sum annually was paid from the Treasury for two years afterwards, until an honest administration got in the Post-Office Department, simply through the figuring of Mr. Turner placed on those papers. On the jacket which contains these papers, and on which this order for expedition is based, it is stated that the revenues of the intermediate office on that route amounted to \$76. I have told you that the revenue from all the offices amounted to \$1,090.77, which sum included one of the terminal offices which was on several other mail routes. I have credited to this route all the money earned by that office. That office was Lake City, which was supplied with direct communication daily with the railroad by way of Garland and Del Norte. Yet I credit its receipt in the amount. The revenues of the intermediate office were \$76. We shall show you, gentlemen of the jury, that upon that route in one period of forty-eight hours there were carried two papers, two circulars, two official letters, and one ordinary letter; and for that the Government was paying at the rate of \$23,431 a year. I have not the map of that route here. I will illustrate how it ran. Starting from here [indicating] going to a place called Barnum [indicating], and going to Lake City there [indicating]. I told you the other day of a route which was changed from crossing a mountain, and sent around with service in a bend—the route from Ouray to Los Pinos. Now, there was a route that came up from here [indicating]. This route started from Barnum and came back to Lake City. Another route came up and crossed the mountain to Los Pinos. Now, what was done, was this: In the first place, instead of sending that mail across the route there [indicating], they sent it around up here [indicating], and across here [indicating], and down there [indicating]. There was already a once-a-week service from Ouray to Los Pinos. This was six days in the week, and they sent it around there over that same route. They therefore doubled up the service upon that route. I shall have

something to say about how the Government was cheated upon that route. By so sending it the Government paid double for the service upon that distance from Lake City to Barnum.

Now, on the 4th of October, 1878, four days more than three months after this service commenced, and only fourteen days after expedition was ordered, they cut off twenty-one miles between Barnum and Lake City, as they should have cut it off, because being supplied on this route coming up from there [indicating], it need not be supplied from the route coming down from here [indicating]. They cut it off, as it should have been cut off. But, gentlemen of the jury, in the first place the contractors being the same were not injured by cutting it off at all, and had no claim in equity to the month's extra pay. But, grant that they were entitled to the month's extra pay, why were they not given the month's extra pay on the basis that existed before the expedition? It was expedited from \$3,400 to \$23,000 on the 30th of September to take effect on the 1st of October, as I remember, and on the 4th of October these twenty-one miles were taken off, and the contractor got his month's extra pay, reckoned not upon the pay of \$3,400, which was given by the Government when he did the service, and by which the calculation should have been made, but upon the \$23,000 allowed for expedition, which had taken effect only a few days before. On the 16th of July, 1880, three trips were taken off and \$10,000 deducted, and then there was a little addition of seven miles, which was put on subsequently. The expedition on this route was obtained on the affidavit of the subcontractor who swore that to make the trip in thirty-six hours, on a daily schedule, would take six men and twenty horses, making twenty-six in all, and in twenty-four hours would take fourteen men and forty-eight horses, making sixty-two in all. The persons who did the work will show you that that statement is grossly untrue; that where sixty-two was the net result on the contractor's statement, twenty-nine should properly have been the figure, and that the allowance based upon the facts should have been less than half of what the subcontractor by his affidavit made it. In other words, the subcontractor, on the basis of the affidavit, got one-half more than was legally proper, and then Mr. Turner added to that \$4,368 by his arithmetic. Then the time having been thirty-six hours, and the order having been to reduce those thirty-six hours to twenty-four hours, in point of fact, both before and after this \$20,000 was ordered taken out of the Treasury of the Government, the mail was being carried over that route in twenty hours. It was a stage route for passengers and express business. The contractor or the subcontractors found it necessary to carry the mail in twenty hours. He was carrying it in twenty hours under a contract which only obliged him to carry it in thirty-six hours. Under these circumstances Mr. Brady makes an order that he shall be obliged to carry it in twenty-four hours, and he continues carrying it in twenty hours; but under Mr. Brady's order he put in his pocket \$20,005.12, of which \$15,437.12 was for expedition which was being done months before the order was made, and was being done by the contractor for his own interest as a carrier of passengers and a carrier of express matter.

Route No. 38156, from Silverton to Parrott City, let at sixty-nine miles, to be done twice a week, in thirty-six hours, was in the hands of Mr. John W. Dorsey, contractor, and the amount was \$1,488. The address was lock-box 714 before the contract was entered into. On the 1st of October, 1878, the subcontract of William E. Earle was placed on file. Under that subcontract J. W. Dorsey, who was getting \$1,488 from the Government, undertook to pay William E. Earle \$2,280 for

performing the service. The subcontract was made upon a printed blank with the heading of Miner, Peck & Co. It was made by the firm of Miner, Peck & Co., or by J. W. Dorsey upon one of their blanks. On the 1st of October, 1879, Mr. Stephen W. Dorsey becomes a subcontractor at the full amount. On the 21st of January, 1880, Mr. Stephen W. Dorsey's subcontract at the full amount is withdrawn and a subcontract of a Mr. Steineger put on record for \$9,400, the allowance for the route having been, by the proceedings I shall mention, carried up before that time from \$1,458 to \$16,512.28. On the 16th of February, 1879, ten miles were added under the pretense that the mail was to go to Animas City, which was an extension of ten miles, and there was allowed \$215.65. That money when it came to be multiplied into the expedition which was subsequently allowed, cost the Government about \$2,090 a year; and yet, gentlemen of the jury, Animas City was right on the route. The mail went right by the door where it was left under that order; and yet they allowed ten miles for Animas City. On the 1st of July, 1879, five trips were added, and the time was reduced from thirty-seven hours to fifteen, and there was allowed for the five trips \$4,259.12, and for the increase of speed \$10,549.51, making a total allowance of \$16,512.28 on a route which originally started at \$1,488, and the revenues of which were \$2,975.69. That is one of the routes with large revenues. There were some subsequent changes by taking off one trip and then by adding two or three miles, which finally reduced the amount the Government paid to \$14,870. While the sum the Government was paying was \$16,500 the subcontractor got \$5,400 and the contractor \$11,500. When it came down to \$16,000, a different stage of the same thing, the subcontractor got \$9,400 and the contractor only \$7,100. Mr. J. W. Dorsey made the affidavit as to the number of men and horses, and we think we shall show you that that affidavit was incorrect. In point of fact, Animas City was right on the route and added nothing to the distance, and there was on file a distance circular on the subject. Distance circulars are blanks sent from the Post-Office Department to the postmasters on routes on which they are required to state the distance over which the mail is carried. Such a circular was on file in the office, and contained the evidence of these postmasters, that including Animas City, for which ten miles was added to an advertised distance of sixty-nine miles, the distance is only sixty-five miles and a quarter, being three and three-quarter miles less than the advertised distance. Yet there was ordered ten miles added which cost, after the expedition was put on, about \$2,000 a year. Notice to that effect was given three months before the ten miles was added for Animas City. It was on file among the records of Mr. Brady's office, signed by the postmasters three months beforehand, that the distance was three and three-quarter miles less than advertised, and that the route went by Animas City. Yet he added ten miles and \$2,000 a year. That notice was again repeated by another postmaster on the 14th of January, 1879 (which was thirty-two days before the ten miles were allowed), for the purpose of keeping Mr. Brady in mind apparently that he must not do this thing. The postmasters were notifying him that there was no additional distance, and yet he did it. Now, we shall show you that the expedited time was impracticable, could not be made, and was not made. In point of fact, the mail lay over at Durango from the evening of one day until 1 p. m. of the next day. This large sum was paid for expedition to get it to Durango, an important town on a railroad which the route crossed, and there they left it lying from the evening until 1 o'clock the next afternoon before it went on towards the other end of the route. It made no connection,

I may say, in general terms, either at Durango or at the other end of the route, with a single exception. Coming from the north it did, at Durango, connect with trains going one way. But coming from the south it not only did not connect at Durango, but it lay over there eighteen hours before there was any train for it to connect with. Going over the whole route, while the original time was thirty-six hours and the expedited time was fifteen hours, it took thirty-five hours for a letter to make the passage. This was so obviously unnecessary that on the 11th of November, 1880, the postmasters all recommended that the time be made at least twenty-four hours, which was not done; but on the preceding 31st of March, 1880, there having been deducted \$1,958 of fines imposed because the expedited time was not performed, \$1,845 of the \$1,958 was remitted upon the ground that the time could not be made. It would be interesting for us to know whether Mr. Rerdell's statement is true, so that of that \$1,845 Mr. Thomas J. Brady got \$922.50.

Route No. 39140, from Trinidad to Madison, was let as forty-five miles long, once a week, to John R. Miner. Before the service commenced it was increased to nineteen and three-quarter hours from thirteen hours, on the pretense that a place called Raton was taken in on the route. As to that I will have something to say directly. The address was the inevitable lock-box 714, and then he is careful to say, care M. C. Rerdell. On the 11th of November, 1879, Mr. S. W. Dorsey's subcontract was filed, dated the 1st of April, 1879. On the 7th of December, 1880, it was withdrawn, but on the preceding 3d of April, 1880, Rerdell had written that all communications should be sent to him. On the 8th of February, 1881, Miner, who was the original contractor, wants all communications sent to lock-box 706. On the 4th of June, 1881, Mr. Rerdell writes "of the delays and difficulties we are under in consequence of a change in administration and overhauling by Post-Office officials." I trust there will be more delays by the overhauling of Mr. Rerdell. He assured the contractor or the subcontractor that he need not be under any apprehension in regard to his routes, "as this investigation being made by the Post-Office Department is simply a repetition of that made by Congress last year." My own impression is that Mr. Rerdell has changed his mind, and that the investigation which has recently been pursued since it passed into the hands of the gentlemen now connected with it is not a repetition of the investigation that was had by Congress. Mr. Rerdell writes a letter in November, 1881, in which he talks about "I, I, I am going to do" so and so and so; and by and by after the ax had fallen and expedition had been cut off or payment for expedition had been cut off, Mr. Rerdell announces that they are going to test its legality in the courts. They are in court and we want them to test its legality. Now, I said that twenty-eight miles were added on the 1st of July, 1878, before the service commenced. They were added for the taking in of Raton. The people down there had petitioned asking that Raton be taken in, but not them. They asked that they should have a mail route from Raton, twelve miles to where it struck the railroad at Pulkaski, which could have been obtained for about \$300 a year. Instead of that the petition under that ingenious nursing of Turner's indorsement and Brady's order is taken to make that route which previously went straight across to Trinidad describe an acute angle. Instead of giving them the service which they could have got on twelve miles, but which would not have benefited any of the favored contractors, they twisted this around and added twenty-three miles as they claim

to the distance and \$172 to the pay and fitted it up nicely for a case of expedition.

But in point of fact, gentlemen, though they did, by order, twist that route and add twenty-three miles, and paid for it from the 1st of July, 1878, no mail was carried to Raton until the 17th of January, 1879, six months and seventeen days. They paid for mail by the way of Raton before it was carried, in fact. I judge that the wrenching of the route out of shape was so difficult a job that it took them about six months to twist it around there. Having got it fairly twisted around, on the 1st of May, 1879, they added two trips, and they reduced the time from nineteen and three-quarter hours to twelve hours, and they thereby had got what was an original service of \$338 up to \$4,290.25, being an increase of 280 per cent., and of that aggregate amount the subcontractor who was carrying the mail got \$1,550, and the contractor who was not carrying the mail got \$2,402.25. That expedition was obtained upon the affidavit of John W. Dorsey, sworn to on the 26th of April, 1879, the order having been made the 1st of May, 1879, in which he swore that to carry the mail in nineteen and three-quarter hours, three trips a week, took one man and four animals, and to carry it in twelve hours would take three men and eleven animals. In point of fact, the man who carries the mail said that it took to carry it in twelve hours, three trips, at the expedited schedule, two men and six horses, keeping three of those in reserve. Others, persons who have carried the mail at different times, will give you substantially the same figures, and show that in both cases the affidavit was, as usual, a false one, and that it defrauded the Government. I do not know that there was upon that route any other rascality.

On the route from Pueblo to Rosita, No. 38134, advertised as forty-nine miles, let to John R. Miner at \$388, the time was fifteen hours, one trip per week. The subcontractor was paid \$700 where Mr. Miner was getting \$388, I think. I see I have put in my paper here a query for further examination as to that fact, which I have not made, and therefore it is possible that I am in error. As to that, though, I think not. On the 8th of July, 1879, six trips were added giving \$2,328. The time was reduced to ten hours, giving \$5,432 additional, so that a route commencing at \$388 was in a year carried up to \$8,148. The annual income of all the offices on the route was \$1,464. On the 22d of October, 1879, the subcontract of Eli Hanson for \$3,100 was filed, which left net to the contractor \$5,048, and left Mr. Hanson, the subcontractor with \$3,100 for performing the service, save all fines and deductions. And yet Mr. Hanson was enabled to find a responsible contractor who took a subcontract from him at \$2,600. So that while the Government was paying \$8,148 for that mail service, \$2,600 was going to the man who performed the service.

Now, on that route, so far as Rosita, the terminal office, was concerned, the bulk of the mail came from Pueblo, the starting point, to Rosita, by an entirely different route, and came quicker than it came over this route, and substantially none of the Pueblo mail ever came to Rosita over this route, and therefore all the excuse there was for expedition was for expediting it for the benefit of the intermediate offices. And yet of those intermediate offices there was between Pueblo and Greenwood—thirty miles—not an office. The route was only forty-nine miles long. For thirty miles there was no office. The only two other offices, Greenwood and Wetmore, had always a tri-weekly service connecting just as directly as this expedited service. So they expedited it simply for the intermediate post-offices, and in point of fact there was but a

single office which had not full supply from other routes, and that office was Silver Peak, the income of which was \$65.35, and as a result a route costing originally \$388 was carried up to \$8,148, to give more and speedier mails to the little post-office of Silver Creek with an annual income of \$65.35. And this is having "due regard to productiveness."

Now, the assistant postmaster-general had been notified as early as the 30th of August, 1878, by one of the postmasters, that tri-weekly service was not needed, and yet in the face of that he went on and put on this six-times-a-week service. On the 8th of May, 1880, he was notified by all the postmasters that the service was not needed, yet he left the service remaining until an honest administration came into office, when, on the 19th of July, 1881, it was cut down. This affidavit for increase was made on the 21st of April, 1879, by John W. Dorsey. He had no more relation or connection with the route, as the records show, than you have. John R. Miner was the contractor. John W. Dorsey made the affidavit, claiming to be a subcontractor, which he was not. Eli Hanson was subcontractor. He swore that to carry the mail seven times a week on a fifteen hours schedule took two men and six animals, making eight; and on a ten hours schedule six men and eighteen animals, making twenty-four. The carrier says he never ran seven times, or fifteen hours. His estimate is, though, that seven times and fifteen hours would have cost seven men and twelve animals, while Mr. Dorsey swore it would cost two men and six animals, reducing the factor, which would benefit him, from nineteen to eight in his application of the rule of three. And then the carrier says that the amount stated as likely to be needed on the increased price is about correctly stated. It was a route on which passenger coaches and express were run, and where there was a very considerable amount of service of that kind. There were petitions and letters on file for increase signed by various gentlemen of prominence; but if I mistake not you will be satisfied that those letters and the indorsements upon them are in the handwriting of Rerdell and Dorsey, respectively; and that all that there is genuine about them is the signature. There are there signatures of Governor Pitkin, and one or two other gentlemen, asking for expedition, and upon that it is adopted upon that route.

Route No. 38152 is from Ouray to Los Pinos, thirty-five miles, which was let at once a week to J. W. Dorsey or \$348, on a time of twelve hours. That is the route which I described to you as one of those where this route having been twisted so as to get around there, instead of going across the mountains, over what was a seven-days-in-the-week route, this being once a week, was practically rendered surplus and unnecessary. As to this route, I may say that Mr. Rerdell, in his confession to Mr. James, said that there was a route out there in Southern Colorado on which they were regularly drawing the pay, but on which they were performing no service. He did not define the route, carefully claiming that he had heard it talked about, and though he could find it he was not quite sure, but intimated that it ended at Lake City. That led to an examination by us, and it was impossible to find out any route ending at Lake City of which that was true. Afterwards, when the inspectors were sent out into the region, one of them, knowing nothing of any statement of Rerdell, came back thinking that he had made a great discovery. He had made a great discovery, for he had discovered the route that Rerdell was talking about, and had told us about as one on which the contractors were swindling the Government in that way. That was the time when Rerdell was getting information from us.

Now, gentlemen, upon that route, from the 21st of October, 1878, until May, 1879, there was absolutely no service at all, it being performed on the other post-route which went over the same ground; but pay was given for both of them, and it was given in spite of the fact that the postmaster, I am not sure whether at Ouray or Los Pinos, having been written to by the assistant postmaster-general to know why he did not make his returns of the service upon that route, wrote a long and detailed statement, saying that there was no such route practically—no mail carried on it; that the routes were doubled, stating his correspondence with the other postmasters on the route, and giving that as the reason why he made no returns. That letter was received and is on the files of the Post Office Department in Mr. Brady's office. And yet the service never was cut off. Another postmaster sent in his mail-bills monthly. He was required to make a monthly report of the time of arrival and departure of each mail on each route. As to this route he made his mail-bills for three or four months, stating that there was no service on this route. "The mail is carried on route so and so," and he continued those reports until the Post-Office Department and the contractor insisted upon it that there was service and they were going to have it. And he seems, then, after consulting with a terminal office, to have made up his mind that the post-office wanted returns in this way and he made them. But for the four or five months that the postmaster made his returns on his mail-bills, saying that there was no service on that route, he kept in his office the duplicates as required, and we have the duplicates to produce to you. But the mail-bills for these three or four months filed at the post-office, containing that statement that there was no service on that route, are missing from the files of the Post-Office Department.

Mr. MERRICK. What route was that?

Mr. BLISS. Route No. 38152, from Ouray to Los Pinos. And to round the swindle, no service having been had for two years, and payment having been made all the time for those two years for that service, in August, 1880, Mr. Brady did finally wake up and cut off that route and discontinue it, and with a magnificence of extravagance and corruption he awarded to the contractors a month's extra pay. He had paid him for two years' service not performed. He cut it off because there was no necessity for the service, because it had not been performed, and then he awarded a month's extra pay for doing it.

On route 40113, from Tres Alamos to Wilcox, by the way of Clifton, one hundred and ninety-seven miles, once a week, John W. Dorsey was the contractor. The time was eighty-four hours, and \$1,568 was the amount. On the 10th of May, 1879, John W. Dorsey, in a letter, his in form, but in a letter written by Rerdell, transmitted petitions to be circulated, and the indorsement upon them is in Rerdell's handwriting. I am going over these, naming the routes a little more rapidly, for which you will probably be obliged to me. On the 2d of June, 1879, within less than a month after the petition, two trips are added for \$3,136, and the time is reduced from eighty-four to forty hours and an allowance made of \$9,408. The total is \$14,112. Mr. Dorsey's subcontract was filed on the 31st of October, 1879, and withdrawn on the 1st of January, 1881, at which time \$2,149 was taken off, leaving the total amount \$11,962. On the 2d of February, 1881, just before Brady's career ceased, four trips were added, and \$15,950.62 added to the expense of that route, making the expense then about \$26,000 or \$27,000.

Now, let us go to Oregon. On route 44140, from Eugene City to Bridge Creek, two hundred and seven miles long, let on a schedule of one hundred and twenty-one hours, once a week, John M. Peck was the contractor at \$2,468. There was a subcontract filed by a Mr. Wyckoff for \$2,700 on the 1st of October, 1878. When filed Peck was getting only \$2,468. He agreed to pay \$2,700, but it provided for an increase to three trips, and to six trips and to seven trips, looking out for all contingencies in that way. On the 14th of May, 1879, the address was ordered to be to the care of M. C. Rerdell, box 706, with a kind of a suggestion that the urgent wants of this region ought to be attended to at once—something of that general nature, and the mill grinds the thing out in that way. We shall place before you, gentlemen, both Mr. Wilcox and the father of Mr. Wilcox. We shall show you what they did. I wish I was permitted here and now to read to you one or two of Mr. Dorsey's letters written in that connection, to read to you the form of the petition which he sent to him to have signed, to read to you his exhortation to vary the language, and to do it as miscellaneously as he could, and that he must have at least fifty letters, and have them in a hurry, as he wanted that increase and expedition right off, as this route was losing money. It is the old story of the muskrat, "There is no meat in the house." He wanted that route attended to right off.

That was in May, 1879. June 26, 1879, the effect of Wilcox's work began to appear. On that day two trips were added, and on that day the time was reduced from one hundred and twenty-one to fifty hours, making \$21,460.89 as the aggregate pay of that route, which began by costing \$2,468. But while originally it was costing Mr. Peck \$232 out of pocket, after he got expedition for a time, it put \$14,060.89, net, so far as any expenses of carrying the mail were concerned, into the pocket of the contractor, and gave the subcontractor \$7,400 of that amount only, and the fact that the subcontractor was to get only \$7,400 for doing the work, while the contractor was to get \$14,060 profit by the work.

And now commences, gentlemen, of the jury, the petition business. You find in the first place a petition for increase which is in Rerdell's handwriting. You find also that that petition, so far as it has been signed by parties is signed by parties at Eugene City, that being one of the termini, but having a railroad connection, parties who had no direct or very particular relation with this route. This route, gentlemen, is the one to which I think I called your attention with reference to the letters written by Stephen W. Dorsey to Wilcox, and which Wilcox read to Mr. James and Mr. MacVeagh and Mr. Woodward and Mr. Clayton. I think I mentioned that Clayton was present at the first of those interviews with Rerdell. Those letters which he read from a letter-book, which he stated were Dorsey's, are the letters relating to this route which he sent to Wilcox. Wilcox had lived in Arkansas, had been a little active there in politics, and he had gone over to Oregon, and Mr. Dorsey writes to "My Dear Frank" to go to work to get up these petitions. He is to get up petitions, he is to get letters, he is to see that there are a proper number of Democrats to write to Democratic Senators, he is to see to getting articles in the newspapers, and he is to do a great many things of that kind, and he did them most industriously and ingeniously. He wrote letters which we shall show to you, which appear here in his handwriting, signed by people out there, who signed them at his request. They were transmitted to Mr. Dorsey, and Mr. Dorsey thereupon transmitted them to Mr. Brady. What he had so ingeniously employed Wilcox to do, was put by Mr.

Brady into the order making the expedition, because the subcontractor had known enough to place his subcontract on file, and Mr. Brady could not make an order unless he recognized the amount of money that was to go to the subcontractor. At a subsequent time there was a subcontract made for \$9,500 and that was raised to \$12,000. The affidavit in this case was made by Peck, on the 22d of June, 1879. The order for it came on the 26th of June. Without going into detail, the evidence will satisfy you that the affidavit was like the others—incorrect in both branches and incorrect in each case, in a manner to defraud the Government. The total revenues of the route, the expense of which was carried to \$21,460.89, were \$639.82. That route, gentlemen of the jury, passes through an unsettled country. For long distances there are no inhabitants. For forty miles it is literally true that there is not a soul residing. For seventy miles it is true that there was not a road. One of the villages through which it passes has six houses, another two, another fourteen, and another four. For one day we have the means of showing you the contents of the mail. The mail upon that route was one letter, one postal card, and one mail-bill, and the Government was paying at the rate a year of \$21,460.89 for carrying a letter and a postal card. That was developing the western country with a vengeance.

Then, again, on the 28th of March, 1880, following that time, the postmaster at Walterville, one of the stations, wrote that there had been no through mail there for a year, and he wanted the mail reduced at once to once a week. He says he is getting tired of staying up to open empty pouches.

Route 44160, from Canyon City to Fort McDermitt, two hundred and forty-three miles, let on his schedule of one hundred and thirty hours, was let to John M. Peck, at \$2,888. The address is lock-box 714. On the 3d of November, 1878—service ought to have commenced on the 1st of July—the postmaster at one office on the route, Camp Harney, reports the service as having commenced that day, the 9th of December, 1878. The postmaster at the other end reports that they had had no service, and finally on the 4th of January, 1879, the postmaster at Fort McDermitt reports that service had begun. As to that route, therefore, you will see that there was no service for long after its commencement. The mill had apparently not got ready to grind out. Camp McDermitt reports that on the 4th of January, 1879, service was begun for the first time. On the 23d of December, 1878, twelve days before service had actually begun—more than that, before it was possible for there to be any knowledge here that service had begun—when these parties were failing contractors in everything except by the benignity of Mr. Brady they had not been declared so, he added two trips, and reduced the time from one hundred and thirty to ninety-six hours, making a total of \$21,500 that he allowed, when \$2,888 was the original pay, when the subcontractor was to get by the files, \$10,000. On the 1st of August, 1880, four trips were added, and the result of that was that the amount was carried up to \$50,166.66, the original pay having been \$2,888. The subcontractor got \$20,000, or \$21,000 of that \$50,000. Now, of the productiveness of that route, I think I have a statement here. I do not put my eye upon it. It is very small. The net revenue was \$114.50 of that entire route; \$50,166.66 paid for mail over a route which produced in a year \$114.50. And mind you, gentlemen, there was no through mail went over that route! The through mail between the termini went by another route quicker and better, and there never was any pretense that the mail *went over that route*. The letters and pa-

pers all told on that route did not at one time average three pounds a day. They sometimes did not exceed a half a pound. Except within twenty miles of Canyon City there was not, save at Fort Harney, a cabin even on that whole distance of two hundred and forty-three miles. This is the route, gentlemen of the jury, in which the officers at Fort Harney as late as September or October—if I remember right, it was in 1878—wrote to know why they did not get their mails; that passengers could come; that packages could come to them; could they not get their mails, and would not the Postmaster-General have the mails brought to some point where they could send soldiers out and get them if he could not have them brought there. And that letter complaining that they had not the existing service, and saying not a word about any other service being required, Mr. Turner puts into a jacket as a part of the basis of this extraordinary expedition which carries the cost of that route up to \$50,166.66, and credits it to the officers at Fort Harney as asking more service. Now, so much for that.

Mr. Peck swore to the number of men and animals which would be taken, and we think we shall satisfy you that he did not swear to it correctly. But what were the petitions, gentlemen, upon which these increases were made? They disclose a condition of fraud which, I think, even after what I have said to you, will astonish you. One of those petitions is a petition which commences on a sheet of legal cap and comes down to within about four lines at the bottom. It is written in a disguised hand, as it commences, but as the petition goes on the disguise passes away, and the handwriting is disclosed as that of Mr. John R. Miner, and the first name signed to that petition is Mr. Edward Hall, the postmaster at Canyon City, who saw that petition for the first time since this court adjourned, and declares that that name of his is a forgery; that he never saw it and never would have put his name there, and, in my opinion, the handwriting of Edward Hall to that petition is identical with the handwriting of the man who wrote the petition. Three other names are on that piece of paper. There is in that region a man whose name is M. D. Elfresh, and there is signed there the name of D. M. Elfresh. No such man is known in that region or along that line. The other two names are of people equally unknown in that region or on that line. Then we come down to another sheet of paper which is pasted upon that at the bottom. And then there come along fifty or sixty more names, all apparently written by different people, and having all the indications of genuineness. And yet the numerous witnesses that we have here from that route, when they were shown, for the first time, on Saturday that paper, agreed, one and all, that there is not upon that paper the name of any human being who ever lived on that route. Having had some experience in looking at these papers and recognizing some of the names upon that paper which I thought were suggestive, and after the gentlemen who were engaged in this investigation had thought they had made a very great discovery of fraud, as they had, and were stopping there, assuming merely that the names on that list were bogus, those of people certainly not living on the line, as my eye ran down it, I told them to send for the witnesses who were here from Utah, and the result is, gentlemen of the jury, that all the names upon that sheet are those of people well known, or names similar to those of people who are well known in Utah. On the route from Toquerville to Adairville, the route as to which I have already spoken to you, there cannot be any denial that somebody, and probably the man who wrote the name of E. Hall, and who wrote the petition, took from some other paper and from some

other petition this sheet of names of persons who did not live within hundreds or a thousand miles of that route, and it was made to serve the purpose of acting as a cover to enable Thomas J. Brady to increase this route from \$2,888 to \$50,166. Do you wonder, gentlemen, that Mr. Brady says he is too high and magnificent a man to be tried by the ordinary tribunals of the country, and that he ought to be impeached by the Senate and House of Representatives of the United States?

Now, gentlemen, we have another little transaction of Mr. Miner upon this route. I do not know that I have the date here, but Mr. Miner sits down one day and writes to a man out there. He says a postmaster out there has been writing here saying that this mail route is a swindle. That is the substance of it. That all this business is a swindle. "I want you should go and see him"; and "I want you should buy him up; shut his mouth; pay him what is necessary; I guess you can do it for \$25, but shut him up; we don't want any complaints of that kind here; we must have this little matter put right so far as not to interfere with us." That is John R. Miner, gentlemen. By the way, I ought to say that somehow or other, I do not know how, but not long after that Mr. Abbott's post-office was discontinued, and he found himself out of a job.

Mr. HINE. Will you kindly advise me what route that is?

Mr. BLISS. I told you I was talking about the route from Canyon City to Fort McDermitt.

Mr. TOTTEX. What is the number of it?

Mr. BLISS. Forty-four thousand one hundred and sixty. There was some other information that I might have suggested about that route, but I think I have shown you its enormity sufficiently.

Route 44115, Dalles to Baker City, two hundred and seventy-five miles long, was let at one hundred and twenty hours' schedule for twice a week. John M. Peck was the contractor at \$8,288. The address was lock-box 714 again. Service was not begun until the 2d of September, 1878. On the 1st of October Mr. Vaile's subcontract was put on file, and the same month petitions began to appear. On the 29th of October, 1878, the service was increased by the adding of one trip, and the time was reduced from one hundred and twenty to seventy-two hours, so that there was added to the amount \$22,792. The contractor, or Brady, or somebody, was very liberal. If they had only followed out their oath, and given him the benefit of the number of horses and animals he swore to, instead of \$31,080 he would have got \$63,541. The result is that a route which started out at \$8,288 is carried up to \$12,520. On April 17, 1880, for some reason which does not appear, Brady ordered that one trip should be cut off, taking off \$10,360, which leaves \$62,160. But the Government, upon that basis, gave a month's extra allowance. In other words, Brady gave five or six thousand dollars of extra pay to the contractor for that one trip which was cut off. Then, on the 16th of July, 1880, he restored the one trip which had been cut off. Probably the contractor's horses were a little tired, and he thought he would like to give him a month's rest. On the 18th of September, 1879, Peck swore that it took on the existing schedule eight men and ten horses to perform the service on that route. Now, look at it, gentlemen. Here was a route two hundred and seventy-five miles long, which was to be gone over in one hundred and twenty hours each way, and to be gone over twice a week. They were to perform five hundred and fifty miles of service in each week, and he claims that those ten horses and eight men could carry that mail that way—could carry the mail that distance. The least examination of the oath would

have shown anybody who wanted to see anything that Mr. Peck in that oath was lying. He swore that to reduce it to seventy-two hours would carry the number of men up from eight to twenty, and the number of horses from ten to sixty-six. There is no other mail on this route. Perhaps I was wrong in saying that of the last route. There was substantially none other. There was a shorter route between the two points. This is the route as to which there was a shorter route between the terminal points. This is the route which cost the Government \$72,520, and produced a net revenue of \$2,300. There were only three settlements on the entire two hundred and seventy miles, and those settlements were all in a little valley fifteen miles in length, where they had been thrown in by the discovery of some placer containing gold which was gradually "petering out," and the number of people in those settlements and on that route was six hundred and fifty. The allowance for their mail supply was \$72,000. In point of fact there was no expedition on that route until November or December, 1879; though it was ordered in November, 1878, and was paid for. This is the route, gentlemen, on which they gave the credit for through service by simply taking a mail bag twenty miles at each end, and then taking it back, leaving the middle to take care of itself, as to which written directions were given to have it done in that way, as I think, gentlemen, we shall be able to show. The hours are interlined upon the petitions, and we shall be able to satisfy you that the speed called for was impracticable. So much for Oregon.

On the route from Bismarck to Fort Keogh, No. 35051, which was let as two hundred and fifty miles long, eighty-four hours' time, once a week, John R. Miner was contractor, at \$2,350. On the 2d of April, 1878, Stephen W. Dorsey, being a Senator, was in some way interested to know about the road, and he therefore writes to an engineer officer for the length of the route and gets a reply. The letter-box is 714. On October 1, 1878, the subcontract of Vaile gets on file. On the 23d of December, 1878, three trips are added, at \$4,700, and the service is reduced from eighty-four to sixty-five hours, at \$27,950, making a total cost to the Government of \$35,000, and on the 2d of August, 1879, three trips more are added, making \$70,000. Miner swore that three trips would take twelve men and thirteen animals on the then schedule; that to reduce it to sixty-five hours would take one hundred and fifty men and one hundred and fifty animals. In other words, that it would take three hundred men and animals to perform the service in sixty-five hours over a route two hundred and fifty miles long—more than a man and an animal per mile of the entire route to perform the service. The statement was too big even for Brady, gentlemen, and when he made the expedition therefor, he did it less than pro rata. Now this is the route, gentlemen, I remind you, without going into further details, upon which they wanted soldiers to take the mail over the route which they wanted discontinued; it was the route on which they spent nearly or quite the amount of their contract pay for the whole four years in building their stations when there was no expedition—I retract that; there probably was some. It was two months after they declared it was a trackless prairie on which they came in with this expedition and the statement that the country was filling up so fast that they must have this enormous service, and it was carried up to \$70,000. It was the route on which Rerdell proposed to Pennell, the contractor who was putting up the stations, to have the men sign a petition that they lived twenty or thirty miles north of the route, and wanted to have a spur put on for the benefit of the contractor, and Mr. Pennell was

too honest to do anything of that kind, and one opportunity was lost by the contractor. If Miner had not been so busy in getting up the petition on the route which I last read to you I think he could have managed, from the loose papers about his office, to get up that petition without troubling Mr. Pennell out on his route. Now look at it, gentlemen. Here is \$2,350 for carrying the mail two hundred and fifty miles once a week. It is absurd to suppose that the bid ever was made with an idea of performing the service for that money. Though this enormous sum was paid for expedition, the mails were never carried on bid time until away down after August, 1879, and they never were attempted to be carried or pretended to be attempted to be carried. As to the number of men and horses upon that route, we shall show you that it was grossly misstated. We shall bring before you man after man familiar with the whole thing, the superintendent of these contractors and a large number of others, showing you in detail the swindle about that. I said, and I want to give them the benefit of it, that there was a moderation here. They did not run up this \$2,350 as much as they could have done. They carried it up to only \$70,000, when if they had followed the oath of Miner it would have been \$160,000. This is the oath that Miner has stated was an estimate. I think it was. Now, having done all that, and got up to that time in 1880, we find the postmaster at Bismarck, the leading office on the route, writing here that the schedule time of sixty-five hours, which I have told you was not done, was not possible; that it could not be done in schedule time, but that it could be done in six days. The petitions for the increase in this case are many of them in Mr. Rerdell's handwriting. Army officers sign a petition recommending the increase of trips and Mr. Turner jackets it as recommending expedition.

Mr. WILSON. Are you not mistaken there?

Mr. BLISS. What is that?

Mr. WILSON. Do you say that Turner had anything to do with that?

Mr. BLISS. It is jacketed so, and I suppose it is by Mr. Turner. If that is not Mr. Turner's district I am wrong. There are two States not in Turner's district included in these affidavits, and that may be one of them. I am informed it is not his. Then there is somebody else; Turner does not stand alone. He is *facile princeps*, but he has some one behind him. They provided themselves with good corresponding clerks.

From Vermillion to Sioux Falls, route No. 35015, seventy-three miles were let for sixteen hours at once a week. J. W. Dorsey was the contractor, and \$398 was the sum the Government was to pay. On the 1st of August, 1878, he made a contract with a Mr. Leach, who was to do the work for which he was to get \$398, and was to have \$500 for it; and if he got two trips a week, there was to be \$900 paid him for it. On the 31st of March, 1879, a subcontract was filed. On the 1st of August, 1879, a new contract with Leach was filed which called for six trips at \$2,150. The address was lock-box 714, and then subsequently to the care of John R. Miner, lock-box 714, J. W. Dorsey being contractor. There was added two miles, and then it was increased to six trips; then expedited to ten hours, and the result was the \$398 got up to six thousand and odd dollars. Then there was a process of deduction in 1881 by which it got back to \$965. Vaile makes the oath for expedition on this route in face of the regulation. The attention of Mr. Brady was especially called to it by the clerk and he paid no attention to it. A post-office is added and a certain allowance made for added distance when the post-office did not add a rod to the distance. Another post-office is moved so as to reduce the distance and not a dollar is deducted for the change. In December, 1879, all

the postmasters on the route concurred in asking an increase of the time to sixteen hours, representing that the mail could not be carried in the then time. There was no through mail over the route. This is another of the routes in which the contractor was asked to circulate petitions, and a form was furnished him and the petitions were circulated. The blanks were left in the petition. The petition came here directed to be sent to the care of box 714 with the blanks unfilled, and somehow or other it got on file with the blanks unfilled. The postmaster at Vermillion informed Mr. Brady that the expedition was unnecessary, and there was a remonstrance not only of the postmaster, but a remonstrance sent through the Delegate. Mr. Brady indorsed it, "Write Judge B." (Judge Bennett, the Delegate) "that it cannot be done." Cannot take off this expedition. Cannot do that, though the postmasters say it is entirely unnecessary. "Write Judge B. it cannot be done." To some one else he said it would be an injustice to the bidder to cut it off. Mr. Brady's whole view seems to have been the consideration of what he regarded as justice to the bidder. The Government did not seem to enter into his calculations.

Route 46247, from Redding to Alturas, was let for twice a week, one hundred and seventy-nine miles in one hundred and eight hours, to J. M. Peck, contractor. The contract price was \$5,988 and the address lock-box 714 again. Petitions were circulated by Mr. Rerdell. Those petitions bear date on the 12th of April, 1878, three months before the service was commenced. On the 5th of October, 1878, a subcontract with Mr. J. M. Major was filed for \$2,200 more than they were getting from the Government, but it contained a nice little provision that they were to do six trips. It was let for twice a week; and here comes in the evidence that pro rata was not a proper thing in increasing trips. It was let for twice a week to Mr. Major by subcontract. Mr. Major was a large actual mail contractor. He was to do the six trips, three times as much service, for \$15,000, or just twice as much money, and he was to do seven trips for \$17,000, when, if it had been pro rata, it would have been \$24,000. The address is care of M. C. Rerdell. On June 3, 1878, twenty-seven days before the service commenced, a trip was added and the contractor was, without Brady's availing himself of the provision about readvertising or anything of that kind, clearly presented with \$2,994. You see it is absolutely pro rata, one trip being added without advertisement. That having been done, on the 3d of December, 1878, three trips were added and the time reduced from one hundred and eight hours to seventy-two hours, and \$26,946 is allowed for that, and the route started at \$5,988 is carried up to \$35,925. Of that amount the subcontractor gets \$21,000, according to the order which Brady himself made. There were subsequent changes, as the result of which the contractor got \$41,916, and the subcontractor got only \$23,000; and the fact is, gentlemen, that from the beginning of that service before any order for expedition was made the contractor was carrying the mail because he was carrying passengers and express matter on a large stage route, not only in less time than the one hundred and eight hours which he agreed to carry it in, but that Brady paid him \$26,946 for carrying it and reducing the time to seventy-two hours, when he was at that very time carrying the mail in summer in forty-one hours, and carrying the mail in winter in sixty hours. Mr. Brady made him a present of that money for an agreement to carry the mail in from thirty-one to forty more hours than he was actually carrying it when Brady made the order.

Route No. 46132, from Julian to Colton, one hundred and twenty miles long, once a week, fifty-four hours, was let to John M. Peck, contractor, at \$1,188. The address was lock-box 714 again. A subcontract with J. C. Hayes was on file originally at \$1,069.20 on the 1st of October, 1878. It provided for two trips, three trips, and six trips. That was withdrawn in December, and on the 24th of May Mr. Vaile's subcontract was filed for the full amount. On the 24th of June, 1879, two trips were added, and the time was reduced from fifty-four hours to twenty-six hours. Remember those figures, gentlemen. There was \$8,910 added. The oath stated the number of men and animals, and, I think, incorrectly. I think we shall show you that. The mail is stated to have been only thirty pounds in weight, chiefly second and fourth class, and supplied about one hundred and forty families. To the terminal station the mail went better by another route because it was quicker. On this route the petition asked for a reduction to thirty-six hours. The man who circulated the petition will tell you it asked for thirty-six hours. He will tell you that when the order came for twenty-six hours they could not believe it, and that the contractors for some ten or fourteen days carried the mail on the thirty-six-hour schedule because they said they could not imagine anybody would think of making a schedule of twenty-six hours. When you get to the jacket you will find this, that it is all recited along as in accordance with the paper, and at the top of the jacket the indorsement by Turner is in red ink, and is unfortunately torn just where the thirty-six hours is stated. The order below, made by Brady, directing expedition to twenty-six hours, is in black ink, and I will not say as a fact, but I will simply say that gentlemen who have looked at the thing judicially are of the opinion that this "thirty-six hours" which is put in there in red ink and correctly describes what the petition asks for has been changed to twenty-six and made a misstatement of the contents of the petition. At any rate, the petition asked for only thirty-six hours, and they got twenty-six hours.

Route 40104, from Mineral Park to Pioche, two hundred and thirty-two miles long, was let on an eighty-four-hour schedule once a week to J. W. Dorsey for \$2,982. Lock-box 714 is the address. Peck, in a letter written by Miner, asked leave to sublet. They have a subcontract of Rerdell on file. Then they have "Address M. C. Rerdell." Then there is a subcontract with Joe McKibben on file. Then a subcontract with Salsbury on file. Then a contract made by Jennings, which he had sent here two years previously to be filed, and which they had not filed, though the chief clerk had received it, was recognized to antedate it. On the 3d of January, 1879, two trips were added, and the time was reduced from eighty-four hours to sixty hours. On the 23d of July, 1879, seven trips were added. The result was, the route let at \$2,982 was run up to \$52,033.37. On the 22d of January, 1880, Mr. Brady, in an order which recited that the mail bill showed there was very little mail matter and the service irregular, reduced it to one trip and increased the time to eighty-four hours; in other words, put his \$52,000 back to \$2,982. On the 28th of January, 1880, he rescinded that order. He discovered that there was sufficient mail matter on the route to entitle them to four trips a week, and though in the original order reducing it from \$52,000 to \$49,000, he, in his righteous indignation, refused to allow them the month's extra pay, when he rescinded the order which he had made he also gave them extra pay. Dorsey made an affidavit—what purports to be his affidavit; I shall be surprised if it proves to be signed by him—written chiefly by Miner, swearing as to the number of men and horses. The petition is for more frequent service "Three trips on a schedule of

sixty hours," while the service was eighty-four hours, is written over an erasure. A large number of the names are in the same handwriting. A gentleman who "respectfully" recommends a thing to be done is jacketed as "earnestly" recommending it. The petition, as I have said, is not signed by anybody who lives on the route. It is one of the two twin petitions, both signed by the same names—that is, fifty or sixty names, all written by four or five different persons. They do not bear the name of any person living on the route. A careful examination of the paper when you come to see it will show you that it never was prepared for that route any more than the other petition was prepared for that route. Both of them were prepared for another route ending at Mineral Park—the Prescott and Mineral Park route. Both petitions having been prepared for that route have been diverted, and one of them used for this. On the 6th of July, 1878, the postmistress at Saint Thomas had written to Mr. Brady: "Some blockhead has been the means of having the time shortened from one hundred and thirty-two hours to eighty four hours." With that notice from a postmistress Mr. Brady goes on and makes a further reduction to sixty hours. The postmaster at Mineral Park had written Brady on the 15th of July, 1878: "The time has been shortened two days from the previous advertisement of one hundred and thirty-two hours. That will necessitate an increase of at least one-quarter in the cost of the service without a corresponding benefit accruing to the citizens along the route. I would therefore suggest that the old schedule be restored." The increase from three trips to seven trips, made on the 23d of July, 1879, which cost \$29,733 to the Government, is made on an undated letter signed by Sydney Dillon, who was the president of the Union Pacific Railroad, recommending it. That single letter, without date, took from the Treasury \$30,000 a year until there was an honest administration of the Post-Office Department. It took that sum from the Treasury on a route which produced an average of \$670.68 a year, and which, under the forcing process of expedition, reduced its revenue from \$761 to \$597.

On the 26th of August, 1879, Mr. Horace D. Bean wrote from a post-office in the vicinity of this route. He was a lawyer there. He wrote that the mail was an average of six letters a day; that the population along the route was twenty to thirty at the different stations, and he says he does not know the causes that led to the establishment of the route. It was not done from petition from the Pioche end of the route. He was right. It was not so done. It was done by forged petitions gotten up for another route to end at Mineral Park. He was sure it would not have been done by any official who knew the facts, and "advised without personal interest." Don't you agree with me, gentlemen, that Mr. Bean took a pretty good measure up there in Nevada of the existing condition of things; that it would not have been done with anybody acting without personal interest? Mr. Brady's order of reduction, to which I have already referred, in connection with mail bills instead of letters, explains how the mistake happened. The number of pouches should have been given instead of the number of letters. From the 16th of October, 1879, to the 31st of December of the same year, thirty-two mail bills went through. In thirty-nine days thirty-one letters went over that route. On twenty days no single letter went over that route; on thirteen days one letter went over that route; on three days, two; on one day, three; on one day, four; one day, five; and the route was then costing \$52,000 a year, of which over \$31,000 was for expedition. That being the record on which Brady, on the 22d

of January, 1878, reduced the mail, on the 28th of January he restored the amount.

Route 38113, from Rawlins to White River, is the last about which I shall have anything to say, and upon this fact I congratulate you, gentlemen of the jury. It is one hundred and eighty miles long, and was let on a schedule of one hundred and eight hours once a week to J. W. Dorsey, contractor, for \$1,700. Lock-box 714 was the address. Mr. Perkins became the subcontractor for \$2,500. Dorsey got \$1,700, and he made a contract with Mr. Perkins to pay him \$2,500. Very liberal for the Middlebury, Vermont, tinsmith. On April, 15, 1879, the address was changed by M. C. Rerdell, and on May 9, 1879, they did it again. Previous to that, on the 1st of October, 1878, there had been a subcontract filed with a man named Wright, by which two trips were to be \$2,850, three trips \$4,065, six trips \$8,317, and 25 per cent. of the expedition. The contractor was going to reserve to himself 75 per cent. of the expedition. (Wright's subcontract was not on file. I think I am wrong.) On December 28, 1878, Mr. Rerdell filed a subcontract, and on May 2, 1879, Stephen W. Dorsey telegraphed to Perkins that "there has been an order for three trips and fifty hours' service." Where did Mr. Dorsey get any evidence of three trips and fifty hours. There never was any such order. There was just about that time a change, but it was not a change to fifty hours. It was a change to forty-five hours. They improved as they went along; apparently after Mr. Dorsey had made his arrangements he thought he might go a little better than fifty hours. On the 7th of February, 1879, Perkins had a subcontract with one of these sliding scales and increase of trips. On the 11th of November, 1879, Mr. Stephen W. Dorsey was subcontractor. In 1880 Mr. Taylor appears; in December, 1879, Messrs. Foote & Dalton appear as subcontractors. Then again Mr. Taylor appears. Now, after all this shifting about from the 12th of May, 1879, two trips were added, and it was reduced from one hundred and eight to forty-five hours. Those little operations cost the Government \$12,000. On the 1st of April, 1881, seven trips were added at a cost of \$18,000. Total, \$31,981.20, on a route originally costing \$1,700. The contractor originally paid \$800 more than he got from the Government. He wound up by getting from the Government between eight and nine thousand dollars more than he paid the subcontractor. Mr. Perkins, the subcontractor, was sent to by Mr. Rerdell. We shall produce Mr. Perkins. We shall produce the letter. A blank affidavit was sent to him to swear to for increase and for expedition, and he was expressly told to swear to it just as it was. He swore to it just as it was by leaving all the dates in blank. We shall produce to you not only the man who swore to the affidavit, but also the officer before whom he swore. They will both tell you it was in that form, and it was in strict obedience to Mr. Rerdell's direction to swear to it just as it was. I think when you see the other oaths and affidavits you will be of the opinion that there happens to be there the evidence that they also were sworn to in blank and filled up as the emergency prompted, perhaps not with dates, but with numbers. Before the expedition, when he was making the subcontract with Perkins, Rerdell told Perkins that there would be an increase; that petitions would be circulated and must be gotten up. Then following that along we find this condition of things: In February, 1881, Mr. Rerdell writes a letter which we have not yet been able to see, in which, from the information we get, he told him that he had made his arrangements with the department, or with Brady—different people

who have seen the letter remember it differently—by which he was to have more expedition or more trips, I have forgotten which, I think more trips, and that he must have petitions gotten up right off; that they must be in Washington before the 4th of March, because on the 4th of March there was a new administration coming in, and he did not know whether he should be able to carry out his arrangements. Immediately upon the receipt of that at one end of the route a petition was circulated in the saloons and elsewhere, signed and sent here, and on the 8th of March, four days after the new administration came in, Brady, still lingering in office, made an order for an increase to seven trips and allowed \$18,725 for it. That order was entered, as every order has to be, into what they call the journal in the Post-Office Department, which is a big book, and at the end of the day it is brought to the Postmaster-General for signature when he is there, and the Postmaster-General signs it. When it was brought to Thomas L. James he saw it, and directed that the order be revoked. It had been given by Mr. Brady without his knowledge under the general authority that Brady had; but Mr. James had authority over him and he directed the order to be revoked. On the same day Mr. Brady had a conversation with Mr. James about it, to know whether that was intended to be the system and policy of the administration, and was told it was. Yet that order of the 8th of March never was revoked by Mr. Brady, and payment was made under it until after Mr. Brady had gone out of office. When it then appeared that there was one case of increase under the administration of Mr. James, Mr. Woodward called the attention of the Postmaster-General to it, and then for the first time he discovered that Mr. Brady had been determined, even in going out of office, to benefit his friends, the contractors, as long as possible. Mr. Brady had left the order in existence for two months after, and until he went out of office, and it was not discovered. The result was that during that time the Government paid under that order. I ought to say that the jacket is indorsed on that route as stating that the petitions asked for a reduction of forty-five hours or forty-three hours. In point of fact, the petitions asked for eighty-four hours. They do not ask for forty-five hours in any sense. On that route, while the Government was paying about \$20,000 for the service, the subcontractor who was doing the work at \$10,000 a year says it paid him well.

We have arrived at the hour of adjournment and I have not time to go into further details. I will have pity upon you and the court by not talking any longer or seeking either to prolong the time or to continue on another day. I only desire to say that we claim on the following routes there was no expedition, though ordered and paid for:

34149, 38150, 38135, 46247, 35051.

On the following routes there was no expedition, because it was impossible to be done:

38156, 38145, 35015, 44140, 44155, 35051.

On the following routes we shall show you that expedition was utterly unnecessary and unjustifiable, whether judged by the productiveness of the route, the importance of the route, the wishes of the people, or the amount of mail matter:

38134, 38150, 38135, 41119, 38140, 38156, 38145, 44160, 46132, 46247, 44140, 44155, 40104.

On the following routes we shall show you that petitions were gotten up by these defendants, and did not represent in any sense the wishes or desires of the people of the locality:

41119, 38145, 44160, 46132, 46247, 35015, 44140, 44155, 40104, 35051, 38113.

I had intended to pass to some other matters, but I will not do so. I will simply say, gentlemen, that unless we greatly misjudge and miscalculate the force and nature of the testimony, and that unless we greatly misjudge you, we shall expect at your hands a verdict of conviction against these defendants. But, gentlemen, we are seeking justice, not victims. If as to one or more of them you can, upon your oaths and your consciences, say that we have failed to satisfy you of their guilt, we shall accept your verdict and be glad that we have misjudged one or more of these defendants. Our duty will be done when we place before you this evidence. Your duty will commence, so far as judging the weight of evidence is concerned, when you retire to your jury room. We ask that you shall consider this evidence calmly, without any prejudice for or against, and uninfluenced by any other considerations whatever. And I ask you, gentlemen, personally, for myself, that as the evidence comes along you will bear me in mind sufficiently to consider whether I am not correct in claiming that I have not overstated it in any respect.

At this point (3 o'clock and 7 minutes p. m.) the court adjourned until to-morrow morning at 10 o'clock.

TUESDAY, JUNE 6, 1882.

The court met at 10 a. m.

Counsel for the Government and defendants being present.

The time of the court until 10.50 a. m was occupied in another case, after which—

JEREMIAH M. WILSON, Esq.,

addressed the jury on behalf of the defendants, Thomas H. Brady and William H. Turner, as follows :

May it please your honor, and gentlemen of the jury : The counsel for the Government, who has occupied about nine hours and a half of your time in the presentation of this case to you, took occasion in the beginning of his remarks to say that this was regarded by the prosecution and by the Government as a case of very great importance, and one which had attracted a great deal of public attention. It has attracted a great deal of public attention. For more than a year past the Government, with all its enginry of power, has been at work on this case, with its specially employed attorneys for that purpose, with its special inspectors and agents and detectives (of which you will understand me as not complaining), and regularly, from day to day, from week to week, from month to month, through more than a year, there has gone out to the country, through the press, the most garbled, the most unfair, the most untruthful accounts in regard to the matters that are now before you, in which these defendants have in the most unstinted way been charged with being thieves and robbers. Thus this matter has come to the public attention. Of this I do complain ; of this I have a right to complain ; because these things warp and distort judgment, and tend to preclude the party who may be accused from receiving a fair and impartial trial.

Now, gentlemen, we are at last before you twelve men, each of whom for himself has stood here in the presence of this court, and in the presence of his God, and has said upon his oath that he can and he will render a fair and impartial verdict according to the law and the evidence in this case. And that, gentlemen of the jury, speaking for the two men whom I represent in this case, is precisely what we want.

Gentlemen, I appear for two of these accused parties, General Brady and Captain Turner. If in the opening statement of this case a fair, a candid, and an impartial presentation of the facts had been made as they appear of record, and as they are known to this prosecution, known to the counsel for the Government who addressed you, I would not be standing here addressing you now. But as I know that many of the facts upon which we rely for the complete and triumphant vindication of our clients have been carefully withheld from this jury, and as I know that facts of record have been distorted, as I believe, for the purpose of exciting prejudice in the minds of this jury, and as I know that statements have been made as facts which are not facts, and as I know that comparisons have been made of the most unfair, uncandid, and misleading character, I must beg your indulgence while I present, so far as my clients are concerned, the facts of this case, as I understand them to be, and as I am quite sure they will be disclosed by the records and files of the Post-Office Department. And after we have traveled our weary way through the case in all its details, you will judge whether the statements that I shall make and the inferences that I shall draw are just and truthful, and between the counsel, who has opened this case for the Government, and myself, you will judge touching our frankness in this matter.

Now, gentlemen of the jury, we all boast of the vastness and the greatness of our country, the thrift, and the energy, and the enterprise of its people. We take great pride in our institutions, in that they foster and aid individual enterprise. But it is only the exceptional few, or those who have occasion to make special examination, who even approximately come to appreciate how vast and how great is our country, and the irresistible push and enterprise of the American people.

There is, perhaps, no one of the institutions of this Government that sheds more light on this result, is more instructive in this direction than the contract office of the Post-Office Department, which we are now about to consider. In the year 1876 there were in the United States nine hundred and twelve railroad postal routes, aggregating in length seventy-two thousand three hundred and forty-eight miles. There were eighty-two steamboat routes, aggregating fourteen thousand eight hundred and thirty-three miles in length. There were eight thousand and three star routes, aggregating one hundred and ninety-four thousand five hundred and sixty-seven miles in length. In 1877 there were nine hundred and fifty-eight railroad routes, aggregating seventy-four thousand five hundred and forty-six miles in length; ninety-eight steamboat routes, aggregating seventeen thousand and more miles in length; and eight thousand one hundred and seventy-eight of the star routes, aggregating over two hundred thousand miles in length. In 1878 these had grown until the railroad routes aggregated one thousand in number, and in length seventy-seven thousand one hundred and twenty miles; the steamboat routes had increased to one hundred and six, aggregating in length eighteen thousand and sixty-nine miles; and the star routes had increased until they had reached eight thousand eight hundred and eleven, aggregating over two hundred and six thousand miles in length. In 1879 the growth

had been such that the star routes had increased to one thousand and fifty-nine; fifty-nine additional railroad routes had been added, making an aggregate length of upwards of seventy-nine thousand miles; the steamboat routes had grown to one hundred and twelve, and the length in miles to twenty-one thousand two hundred and forty; the star routes had increased to nine thousand two hundred and twenty-five, and the aggregate length of miles was over two hundred and fifteen thousand. In 1880 these routes had increased until the railroads had reached one thousand one hundred and eighteen in number, and over eighty-five thousand miles in length; the steamboat routes one hundred and thirty-one in number, and over twenty-three thousand miles in length; and these star routes had grown until they had reached nine thousand eight hundred and sixty-three, aggregating in miles over two hundred and thirty-five thousand. Between 1876 and 1880 the railroad routes had increased in number two hundred and eight, and had increased in miles over three thousand; the steamboat routes had increased in number forty-three, and in miles over eight thousand; the star routes had increased in number one thousand eight hundred and sixty, and in miles forty-one thousand six hundred and eighty-one. When you consider that the aggregate of these routes at the close of the fiscal year ending June 30, 1878, which is about the time at which they claim these frauds began, was in number nine thousand nine hundred and seventeen, for which contracts had to be made, because the contract office had charge of all these routes; and when you consider further that it represented an actual mileage of carriage—these figures are startling—of over ninety-two millions of miles, you will begin to have some conception of the labors incident to the office of Second Assistant Postmaster-General, you will begin to see how utterly impossible it is for any man to watch the details of so enormous a business, and how preposterous is the proposition sought to be impressed upon this jury by the counsel for the Government that General Brady should have scrutinized every petition and every letter and every application for increase and expedition, and should have set on foot special inquiries in regard to all the details of this enormous business which was being transacted through the contract office of the Post-Office Department. I will speak of that again hereafter, and will only add now that of necessity the office is separated into divisions, each one of which has a head, who is bound to look after these details, and upon whom the Second Assistant Postmaster-General, or the Postmaster-General himself, are compelled to rely with regard to the details of these duties which they are thus called upon to discharge.

Now, gentlemen, the few facts I have stated will give you some idea of the office which my client was occupying and the extent of the labors imposed upon him. I wish you, at this point, to bear in mind that these routes are not made by the Postmaster-General, or by the Second Assistant Postmaster-General. These routes are made by Congress and the department puts the service upon them after Congress has marked them out upon the statute-books of the country. If it was not wise to make these routes, you must turn your criticism not upon the Postmaster-General, not upon my client who was the Second Assistant Postmaster-General, but you must turn your criticisms upon the Representatives of the people who were interested in these routes and who made these routes for the business accommodation of the people of the country. Year by year, session by session, Congress made these new routes to which I have called your attention, created them upon reports made by the Committee on Post-Offices and Post-Roads recommending the

creation of these routes. These routes were made necessary by the growth of the country and the diffusion of the people into regions before uninhabited. They became necessary for the Government's own uses, to connect its military posts, as I will have occasion to show you after awhile, or in the interests of its revenue service, and so on; and Congress made them because in its wisdom, coming up from the people themselves who were most interested in these things, they were thought to be necessary.

Now, gentlemen, let us look for a moment at the manner in which contracts are made for this enormous service. The law requires that the service shall be performed by contract, and that the contracts shall be let to the lowest bidder, and that proposals shall be advertised for by the Post-Office Department, and that the contracts shall run for four years. Do not forget that four years constitute a contract term; and when I speak hereafter of the contract term you will understand exactly what I mean. In making up this advertisement for proposals a statement is made of the length of the route, so many miles long; of the number of trips that are to be performed, and of the speed at which the service is to be performed, or the trip is to be made. I here show you, gentlemen, one of those advertisements, the one that was alluded to during the opening statement made by the Government, upon which the proposals have already been received, and contracts have already been made and will go into operation on the 1st day of July next. I shall be glad to have you look at it in order that you may see something of the character of this business.

Mr. MERRICK. That is a little irregular, but I propose to let you read or show anything you please.

Mr. WILSON. Thank you.

Mr. MERRICK. Anything you want to read you can read, and anything you want to show you can show.

[Mr. Wilson here submitted to the jury a copy of the advertisement of the Post-Office Department, dated October 15, 1881, for proposals for carrying the mails in Colorado, Oregon, Nevada, and California, and the Territories, from July 1, 1882, to June 30, 1886.]

Mr. WILSON. [Continuing.] Now, gentlemen, for example, let me take the first route that appears in this book:

Route 36101, in Montana. Service from July 1, 1882, to June 30, 1886. That is the contract term running four years. Then they say from Fort Buford, Dakota, to Poplar Creek Agency, Montana, sixty-five miles and back, once a week. Leave Fort Buford Tuesday at 7 a. m.; arrive at Poplar Creek Agency in thirty-six hours. Leave Poplar Creek Agency Friday at 7 a. m.; arrive at Fort Buford in thirty-six hours. Bond required with bid, \$1,300.

That is a sample of what is gotten up in one of the divisions of the contract office for the purpose of enabling the party who proposes to bid to know exactly what the service is that he is required to perform. He knows that he has so many miles to go, and he knows he is to do it in a certain length of time. Upon that information which is thus given him he makes his bid.

Now, if I understood the opening statement of the prosecution a point that was made was this: That on some of these different routes that are named in this indictment the advertisement was made for too few trips on too low a schedule, they said, so that afterward the trips would be increased and the time would be diminished, and thereby the Postmaster-General or the Second Assistant Postmaster-General would be enabled to add to the compensation which was to be paid for the

carriage of the mails, and that thereby and by that device money was to be fraudulently taken from the Treasury of the United States. Now, understand the point, gentlemen, because I want to meet it by what I shall show you is the fact in regard to this matter. They say that here was a conspiracy to defraud the Government of the United States. How was it to be accomplished? One of the modes by which it was to be accomplished, as these gentlemen tell you, is that in making the advertisement they advertised for too few trips in some cases, that they ought to have advertised for all trips that were necessary, and then there would have been no occasion for increasing the trips. They also say they ought to have advertised for as much speed as was necessary, and then there would have been no occasion for increasing the speed. And because they did not advertise for the requisite number of trips and for the requisite speed they say it is an evidence and a badge of fraud and an indication that these parties have been engaged in a conspiracy to defraud the United States. They say, why did you not advertise for the proper number of trips and why did you not advertise for the speed that was necessary, and then there would have been no occasion for any increase of the time. They say that Brady ought to have informed himself about this, and because he did not advertise for all that was needed and afterward increase the time and speed it is an evidence of fraud.

Now, gentlemen, some of you have looked at the book which I showed you, and you have seen where these routes were. In connection with what I have said as to the character of Mr. Brady's office you will begin to see how much plain common sense there is in this point to which I have just directed your attention. Counsel would have you believe that this failure to advertise for the proper number of trips, &c., was peculiar to Brady's administration of this office. Colonel Bliss, in his opening statement, took great pains to admonish or advise you or assure you—if I could possibly get the right word I would do it—that this present administration is an exceedingly honest administration above all that have gone before it so far as the Post-Office Department is concerned. Now, my friend says I may read what I please.

Mr. MERRICK. Anything the court will permit you to read I shall not object to.

Mr. WILSON. I have here a bulletin such as is issued every day by the Post-Office Department, and I will show you, if this is a proper subject of inquiry in the trial of this case, that only on last Saturday the Postmaster-General, or the Second Assistant if the Second Assistant is responsible now, made no less than twenty-five increases in the schedule, increases in the trips, for the service that is advertised for in the very book I showed you, to the contracts which have been made, but which do not go into execution until the 1st day of July next. Twenty-five of those things which these gentlemen have rung in your ears as being evidence of fraud on the part of my clients were done by this honest administration—and I make no question but that it is an honest administration—no longer ago than last Saturday. Perhaps I may as well say right here as at any other time that they have sounded it in your ears again and again as an evidence of fraud that Brady increased and diminished service before the service had actually begun. Here is the same thing right over again; and I hold in my hand a dozen more bulletins issued from day to day where precisely the same thing has been done. And why, gentlemen of the jury? Simply because in the very nature of things it is utterly and absolutely impossible that these *gentlemen who are sitting here in the Post-*

Office Department could know the wants and needs of this country before they made up these advertisements. It is a country growing with unparalleled rapidity. Its people going to the Far West day by day by hundreds and thousands, new towns and cities springing into existence week after week and month after month. How is it possible for these gentlemen sitting in the Post-Office Department to know exactly the service that is required. You see it is utterly impossible. I make no criticism upon the gentlemen who are causing these changes. On the contrary they are to be commended. Why? Because, gentlemen of the jury, they are adapting this great service to the interests and wants of the country. In the old and long settled sections of the country there is no serious trouble about this, and yet if you will take those bulletins that I have seen you will find that they are constantly changing the schedules even in these old and long settled sections of the country. But in the new country remember that these routes are in the far off young States of the West and in the Territories, where new places are continually being founded, where mineral discoveries are attracting thousands and thousands of people together, making daily mails a necessity where but a few months ago a weekly mail was ample. So you will see that the officer could not anticipate such a case as that. Then again Congress made an absolutely new route. Will you tell me how the officials, in making up these advertisements, can tell just how much speed can be made on this new route that is marked out by Congress through an untraveled country? Will you tell me how the official could know just how many trips a week ought to be put on this new route? He cannot know. What is he to do? Advertise for the lowest number of trips for the lowest reasonable schedule of time, and let time inform him, and the people along the line, and the Government officers inform him whether more service than that is needed.

Now, gentlemen, it is just because it is utterly impossible for the officials here in the department to know just how much service or how speedy service should be put upon a route that the law has been put in the shape that it has. And what is that? Why it authorizes the Postmaster-General to increase the number of trips if he finds it necessary—to do so, to shorten the time if he finds it necessary to do so, to lengthen the time if he thinks it is better for the public service, or to increase or diminish the number of trips, and thus you see that this system which exists here in regard to the management of this matter enables him to adjust the service to the public needs.

Now if the department may thus add to or diminish from the service, then the next question is what is to be done with the contractor? He bid to do the service as is set down in that book, one trip a week, two trips a week, speed two miles an hour, or speed four miles an hour, as the case may be.

But now the Postmaster-General, in looking through that book, and after having gotten such information as he could, comes to the conclusion that he must change these trips, or must alter this schedule time. Every contract that is entered into provides that these changes may be made at the will of the Postmaster-General. He made his contract according to that provision. But now the Postmaster-General says, "I will change your contract." Very well. What is to be done with the contractor? Why, he is to be paid for the additional service. If he makes another trip a week he must be paid for that. If he is obliged to expedite his time he is to be paid for that. And then the question is how is the amount of compensation to be ascertained. It is easy enough, gentlemen, when it is *simply a multiplication of the trip*. There is no trouble then, because if a

man can make one trip fifty miles at the rate of two miles an hour for a given sum of money he can make two trips for twice that amount. It is a mere matter of arithmetical calculation, a mere matter of multiplication. But when you come to increase the speed, then you have a very different and a much more difficult problem. Any one of you gentlemen can start out and walk with great comfort and ease, and without fatigue, it being only pleasant recreation for you, from here to the Treasury Department. But if you start on a lively trot or a run you will be out of wind before you get to Ninth street, four blocks away. So that, applying that simple illustration to this great question that we have in hand, you will see that it is a very different question when it comes to the point of increasing speed, of regulating the compensation that is to be paid for the increase of speed, because it takes more men, more horses, more vehicles, more feed for the stock, more feed for men, more accommodations. There are a thousand things, almost, entering into the consideration of this particular problem with reference to which I now speak.

Up to 1879, gentlemen of the jury, there was no fixed rule in the department with reference to the solution of this particular question. The department had to meet it. They had to adjust these things from time to time, but they always had difficulty in doing so. Congress had made two provisions of law on this subject. One of them is this:

Compensation for additional service—

Now, I wish you to get these two things separated in your mind. There is additional service, and there is expedition of service. Addition of service is simply adding to the number of trips. Expedition of service is adding to the speed of the trips. Now, Congress has recognized this division, and Congress has seen the difficulty that there is in a matter of this sort, and it has attempted to provide for that difficulty by a section of the statute. Now, first:

Compensation for additional service—

That is, increase of trips—

in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service, and when any such additional service is ordered the sum to be allowed therefor shall be expressed in the order, and entered upon the books of the department; and no compensation shall be paid for additional regular service rendered before the issuing of such order.

Now, that is all, simply. They say if there is one trip, and you increase it to two, you simply give the same compensation that he got for the other for the additional trip, and so on in like manner. Now, when it comes to compensation for increased celerity—mark you—that is, expedition, Congress says:

No extra allowance shall be made for any increase of expedition in carrying the mail, unless thereby the employment of additional stock and carriers is made necessary, and in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution.

Now, you see that Congress—not the department, not my client—took the stock and carriers on the one schedule, and the stock and carriers on the other schedule as being the guide of the department in settling this vexed and difficult problem of compensation for increased celerity. This thing had its origin, not in the brain of my client; not in any conspiracy—unless these gentlemen who sit here upon the hill are a band of conspirators—it had its origin in the Senate and House

of Representatives of the United States of America, with the approval of the President of the United States.

Now, what follows after that? Congress having passed this law something had to be done about it to execute it. It was the duty of the Postmaster-General to see that this law was executed. Now, what happened? Why, Congress having enacted these provisions the Postmaster-General issues this:

POST-OFFICE DEPARTMENT,
Washington City, July 1, '79.

The regulations herein contained are issued by my authority and have my official sanction. All former regulations and rulings in conflict or at variance with those herein contained are hereby abrogated. All postmasters and other postal officers and employes are required to return to the Post-Office Department all copies of former editions of the postal laws and regulations immediately upon the receipt of the present volume.

D. M. KEY,
Postmaster-General.

Now, under the law, the Postmaster-General has a right to make regulations, and when he makes them, those regulations, as provided by statute, have the force and effect of law, and the Postmaster-General accordingly issued this book of regulations. Now, I will read you a regulation:

When it becomes necessary to increase the speed on any route—

Mark you—

the contractor will be required to state under oath the number of men and horses required to perform the service according to contract schedule, and the number required to perform it with the proposed increase of speed.

Now, there you have it. Here was Congress making that the guide. Here comes along a Postmaster-General, having the power to make a regulation having the force of law, which every subordinate, from the First Assistant down, was bound to obey, and makes a regulation in which he says that the oath of the contractor shall be filed showing, first, what is the number of men and horses necessary for the present rate of speed, and then the men and horses that will be required for the increased rate of speed. I feel entirely authorized to say to you, gentlemen, that it will appear in this case that the pro rata rule, as nearly as it could be gotten at, has been the rule that has prevailed in the department for more years than my client has lived; but this regulation, which I have just read, is the first time that the Post-Office Department has undertaken to fix by regulation or by law of the department the mode by which the thing should be ascertained after the passage of those acts of Congress. Now, do you not see, gentlemen, that here the Postmaster-General has fixed a guide on this subject, and yet the complaint is made here, and it is one of the points that has been urged most persistently before you, and repeated over and over and over again, that there was something wrong in the action of my client. General Brady, in accepting the oath of the contractor with reference to this matter of the number of men and animals necessary upon the one and upon the other of these two schedules. And it is complained of that he did not go beyond what the law required, beyond what the Postmaster-General had required and go into special detailed investigations with reference to the number of men and animals that would be required. Why, gentlemen, how would you do it? Can you conceive? Colonel Bliss says, "Why, he could reach people in four or five hours by a telegram." True. To whom would he telegraph? Some cow-boy down in Texas or Arizona or New

Mexico? Some postmaster who had no experience in these matters. Would he telegraph to some farmer living along the line of the route? Where would he find the men to whom he could telegraph, or write or send, if you please, upon whose judgment he could infallibly rely? Suppose he did and he got hold of the wrong man. Then these gentlemen would come in here and say, "Oh, that fellow was in the conspiracy with them." What would he do? I presume, as was suggested to me by one of my associates this morning, that they would have him come and submit the matter to you. That would be the safe way, because he would not get in trouble, because when you had decided it then it would be all right, especially after the court had pronounced judgment upon your verdict. But will you tell me how he would inform himself of this matter? And yet, that is one of the complaints that is made in this case: That he did not go into a sufficient investigation to inform himself, and if he did not sufficiently inform himself it must be a badge of fraud. But he did do it and that was done which the law and the regulations required. The Postmaster-General having set that up as his guide, when these things came to him and sufficient evidence was furnished him that the service was needed, then he made the contracts.

Now, gentlemen, right here I want to say another word lest I may forget it. The idea has been conveyed to your minds, I have no doubt, that invariably the number of men and the number of horses that the contractor said was necessary was accepted blindly and the increased compensation allowed according to that. Why, gentlemen of the jury, there is nothing further from the truth. And I do not see how Mr. Bliss could but know that nothing is further from the truth. And if we are to go outside of the particular routes that are mentioned in this case, we will show you cases without number where the Postmaster-General refused to fix the rate of compensation according to the statements made in the affidavit. He jewed and screwed these men down in some of these routes on that very thing, as they were compelled to admit themselves on yesterday where an affidavit had been made that one hundred or one hundred and fifty men and horses would be required, which would have given more than \$100,000 of compensation if he had been in this conspiracy. That would have been the compensation that was fixed, and yet it was a great deal below that sum.

Now, gentlemen, this matter of the compensation for this increase and expedition, or this matter of expedition and service, was a troublesome one with this department, and Mr. Bliss in his first day's argument spoke to you of Congress having intervened for the purpose of protecting the Government against extravagant allowances for expedition of service. He occasionally found something to commend. The only fault I have to find with him was that he did not give credit to the man who was the author of it. That would not have suited the purpose of this prosecution. I wish to read a paragraph from a public document.

Mr. MERRICK. What is it?

Mr. WILSON. It is the report of Thomas J. Brady, the Second Assistant Postmaster-General, made in the year 1879:

I desire to call particular attention to the existing laws, which have been in force many years, under which orders for increased frequency and increased speed are necessarily made. The section relating to increase of service is as follows.

Then follows the exact section which I read a moment ago.

That relating to allowance for increased celerity, is as follows.

And then he sets that out so that the Congress of the United States will not overlook it. Now he says:

It is frequently the case in regions comparatively new that service is not required at the time of advertising more frequently than once or twice a week, and after the contract is entered into and the service is put in operation, population centers along the line of the route, and more frequent service becomes a necessity. Under such circumstances it is clear that the rate that was reasonable for once or twice a week's service through a sparsely settled region becomes a very unreasonable basis upon which to increase the service when the circumstances under which it is to be performed are entirely changed. I would therefore recommend that section 3960 be amended by adding, after the semicolon following the word "Department," the words "and the Postmaster-General may, in his discretion, relet the service by advertising for proposals for thirty days in the newspapers at the termini of the route, or if there be none published at those points, then in others in circulation in the region to be supplied with the mails; the service to be awarded to the lowest bidder, as usual."

Under section 3961 allowances for increased speed are based upon the sworn statements of contractors, showing the additional stock and carriers required.

Now, there he is directing attention to the regulation of the department.

This practically makes a man and a horse of equal value as factors in determining the rate of increased compensation to be allowed. I would, therefore, recommend that allowance for increased speed be based upon the proportion the cost of performing the original service bears to the cost of the service at the increased speed; and that such additional allowance shall in no case be greater than fifty per centum of the original cost of the service. In case the cost of increased speed would amount to more than fifty per centum of the cost of the original service, the Postmaster-General shall re-advertise for service with the increased speed; or, in his discretion, he may advertise in any case where increased speed is necessary, the advertisement to be inserted for not less than thirty days in newspapers published at the termini of the route, or in those published elsewhere having circulation along the line of the route, the contract to be awarded to the lowest responsible bidder, as usual.

This will accomplish, with but little delay, the desired improvements in the service, and with, I think, great advantage to the Government.

Now there my client directly called the attention of Congress to this subject, pointed out where the difficulties were, recommended legislation upon the subject, and, in part, Congress adopted it. They simply adopted that which related to the 50 per cent., and left a balance standing as it was before.

Now, in this connection I will call your attention to another matter about which the prosecution complained, to wit, the allowance to the contractors of a month's extra pay. You have heard a good deal said about two or three cases where a month's extra pay was allowed a party. For example, I will take the Saint Charles and Greenhorn route, where the town of Agate was added on to the contract, and afterward was taken off again, and when taken off there were a few dollars allowed to the contractor for a month's extra pay. Now, gentlemen, what is the law upon that subject?

The Postmaster-General may discontinue or curtail the service on any route, in whole or in part, in order to place on the route superior service, or whenever the public interests, in his judgment, shall require such discontinuance or curtailment for any other cause, he allowing, as full indemnity to contractor, one month's extra pay on the amount of services dispensed with, and a pro rata compensation for the amount of services retained and continued.

Now, right in this connection I want to say another word on this subject. I say it will appear to you in this case before we are through with it, or half through with it, if the prosecution does its duty, that it is the settled practice of the department, the law of the department, the law as laid down by the Supreme Court, and by the Attorney-General of the United States, that when the contractor has had an addition made to the service he is required to perform, it becomes a part and parcel of his contract, and the department cannot avoid giving him that one month's extra pay. The law gives it to him, the courts award *it to him*. It is his as much as any piece of property any one of you

ours. And if the department would refuse it, it would be trample the law of this country under its feet. That is one of the complaints that is made against my client, that he allowed a month's extra pay that has been rung in your ears by the half hour at a time, and rung over and over again. This very thing about which they are complaining has been the law for many many years. There is no question about it, and you will see before we get through with this case that the things that I am complaining of is that these matters were sold to you as they are. You will remember that Colonel Bliss rung over and over, and made a great point of it, that Brady had had a month's extra pay before the service actually began. Is there anything new in that? No, gentlemen, the department records are full and they could not help themselves from allowing a month's extra pay and they are doing to-day, gentlemen of the jury, under this administration, that very thing, and they could not do otherwise if they would, excepting, as I said a moment ago, by trampling down the law. This is the first time that the proof of that thing has ever been disputed that I have heard of since laws were passed. Now you are called upon to impute fraud to him because he executed this law. Again, they charge him with fraud or impute fraud to him because he made orders increasing or extending service before the contract began. I have called your attention just what the department is doing to-day on that subject, and it is what it has been doing through these years and years that are past and gone. And I put a question to you now, and I put to myself here as they proceed in this case, this conundrum: If that is right under this honest administration, I want to know how it would be wrong under some other administration?

Now, there is another thing that has been a great deal talked about during the nine hours that my distinguished friend on the other side is addressing you, and that is this matter of subcontracts and competitive bidding, as it is called. Gentlemen of the jury, this matter of bidding for carrying the mails has been a business for a great many years.

I can remember myself when such firms as J. & P. Voorhees, Columbus, Ohio, and A. L. Ross, and many others were engaged in the matter of carrying the mails or bidding for them to carry them all over the western, now the center or rather the east of our country. Competitive bidding, as it is called, has been in vogue for these many years, and to say, here are men who will organize themselves into a firm, or company, to bid on mail contracts. Every four years, or periodically, they are letting hundreds and thousands of contracts. The routes over the vast country west of the Mississippi River are advertised for at a certain time—vast numbers of contracts. Now, these men bid for that.

They oftentimes bid for routes that they never saw in their lives. They reduce this matter of bidding on contracts and carrying the mails to a business. They study it just as you [indicating a juror], [indicating another juror], or you [indicating another juror], or [indicating another juror] study your business. They get to understand it. You could not bid on a contract. You would have no idea how you could do it for, or anything about it. But they make these contracts. Now, the law requires that they shall put the service on these contracts.

If they can let these bids to a subcontractor, if they can sublet the service, as the law allows them, to somebody else, and that somebody else takes the service, they can get him to take it for a little lower than they could if they took it themselves, then they get the difference as their profit in the business of theirs. If they cannot get anybody to take it at the

same pay they bid, for it they must either stock the routes themselves or they are declared failing contractors, and then they can never bid again, or they must get somebody, for what he will agree, to stock that route and carry that mail. Hence you find often and over and over again the subcontractor getting more money than the contractor gets from the Government. That is a common thing. Now, that is what is called speculative bidding. There are many firms and many individuals, all well known to the department, who periodically bid for this service, and it is because this is so that the Government is enabled to get its service at a very low rate of compensation. These men compete with each other. They know that the lowest bidder is going to get that service, and they calculate and study and make their bids, and in that way the Government, having this vast number of responsible firms and responsible men bidding against each other, puts the service down to the lowest possible point. They do not all expect, as I said a moment ago, to perform this service. Many of them expect to sublet this service. But when they cannot sublet they are compelled to go on themselves.

Now, this thing had been going on for a great many years. The Government knew nothing of these subcontractors; they never appeared on the records of the department. The Government did not know who was carrying the mail or who was not. It dealt only with the contractor himself. He was the only man whom the Government knew. You can see that the Government could not possibly know what it was actually costing to carry the mails. It knew how much it was paying for carrying the mails, but it never knew what it was costing to carry them. Now, then, what happened? Why, in 1877 my client, General Brady, being at the head of this contract office, addressed a communication on that subject to the Postmaster-General in the shape of a report, and here is what he says:

Contracts for transportation of the mails, other than by railway or by steamboat, are let to the lowest bidder after advertisement. Under the law the department has no option, and cannot well have, but must let to the lowest bidder, provided he gives a good and sufficient bond for the proper performance of his contract. There has grown up under this law a system of speculative bidding that is a source of much trouble to the department and of frequent loss to subcontractors (the men who actually do the work of carrying the mails). The department at present can do nothing to protect the subcontractor. This has been the occasion of some scandal during the past summer, and it is to be hoped that the law may be so amended that the department may at least extend some protection to the men who do its most important work. Several methods have been suggested, principal among which are the following:

1. To amend section 271 of the postal laws by the insertion of the word "sublet" after the words "assign or transfer"—

That is to say, the effect of that would be to prohibit the subletting. There was a law prohibiting anybody assigning or transferring a contract, and this proposition was to prohibit the subletting. That would compel the contractor to carry it himself. Don't you see?—

thus confining the contracts for carrying the mails to those who expect actually to perform the service, or at least stop the routes, though they may employ some one to ride the horse or drive the stage that carries the mail. Undoubtedly this would correct the evil; but against this plan may be urged the possibility of increasing the cost of transporting the mails, for the reason that competition would be greatly restricted.

Now, he puts to Congress the exact difficulty that there is in the case. He says to Congress, "If you will forbid the subletting, that will correct this evil, but if you do forbid the subletting then you run the risk of increasing the cost of transporting the mails, because you necessarily cut off a great deal of competition in the bidding." Now, the second mode which he suggests, is this:

2 To give the subcontractor a lien upon the contractor's pay. This would require proper notice to the contract office, probably by filing the contract itself, whereupon said office would notify the Auditor of the Treasury for the Post-Office Department of the fact of such filing, describing by name the contractor, subcontractor, giving the number of the routes, and the amount claimed by the subcontractor. Upon the receipt of this notice the auditor would retain out of the amount due the contractor a sum sufficient to satisfy the said claim of the subcontractor, which would be paid under the rules and regulations now governing the payment made to contractors, provided that upon sufficient evidence that the contractor had discharged his obligations to the subcontractor the contract office should certify that fact to the auditor, who would thereupon pay the contractor the full amount due him.

Now, mark :

This method, while it does not prevent speculative bidding—and I mean by “speculative bidding” bidding by parties who do not expect to do the service themselves, or to even invest money in the necessary stock with which to do it, but who secure a contract for the sole purpose of subletting it at a profit—would probably curtail its present proportions, and would give the subcontractor a remedy or protection where now he has none. It would largely increase the labors of this office, and, to some extent, those of the auditor's; but, if the method first suggested is considered too sweeping in its provisions, I would earnestly urge a favorable consideration of this.

Now, gentlemen, the result of that was the passage of a law which I will read, found on page 146 of the Postal Laws and Regulations. This law was passed on the 17th of May, 1878:

When any person or persons, being under contract with the Government of the United States for carrying the mails, shall lawfully sublet any such contract, or lawfully employ any other person or persons to perform the service by such contractor agreed to be performed, or any part thereof, he or they shall file in the office of the Second Assistant Postmaster-General a copy of his or their contract; and thereupon it shall be the duty of the Second Assistant Postmaster-General to notify the Auditor of the Treasury for the Post-Office Department of the fact of the filing in his office of such contract.

And then it goes on to provide that the payment shall be made to the subcontractor or the subcontractors by the department according to the terms of his contract and under the rules and regulations providing for the payment to the contractors themselves.

Mr. DICKSON. [The foreman of the jury.] What is the date of that?

Mr. WILSON. That act was passed May 17th, 1878.

Provided, That upon satisfactory evidence that the original contractor or contractors have paid off and discharged the amount due under his or their contract to the subcontractor or subcontractors, it shall be the duty of the Second Assistant Postmaster-General to certify such fact to the Auditor of the Treasury for the Post-Office Department; and thereupon said auditor shall settle with the original contractor or contractors, under the same rules as are now provided by law for such settlements.

Now, gentlemen, that is another thing that Mr. Bliss was kind enough to commend. Who was the author of it? Who was it that secured the passage of this law protecting subcontractors, and giving the Government information as to the cost of carrying the mails? It was my client, the man whom they are here to brand with having entered into a conspiracy to defraud the Government of the United States, whose officer he was. And while Colonel Bliss was commending these provisions of the law, I had hoped that he would have gone a little further and read you this from General Brady's report of 1880:

In briefly reviewing the changes in the laws touching the transportation of the mails, and the compensation therefor, which have been brought about at my suggestion since I assumed the conduct of the contract office, I mention with the highest satisfaction the law giving subcontractors a lien upon the pay of contractors for carrying the mails. The persons employed as subcontractors or carriers are, as a rule, dependent upon their own labor for the support of themselves and families, and have but meager knowledge of business transactions to which the Government is a party. The character of the employment being in the nature of a service rendered for the Post-Office Department, they did the work and in many cases for long periods, under the

impression that the Government was obligated to and could pay them for such service, and the mistaken confidence growing out of this idea removed suspicion and rendered them an easy prey to designing men. The present law extends the protection of the Government to those who actually carry the mails, and thus much injustice and suffering are averted. The provision of law enacted at the last session of Congress limiting the increase in compensation for increased celerity to not exceed 50 per centum of the cost of the service at the time of the change, is a decided improvement over the law which prevailed for about a half century. It is believed that the needed facilities can be obtained under the new law; and it is certain that its effect will be to reduce the cost of carrying the mails.

Now, gentlemen, that is what my client has been doing in the way of reforming the law of this country, bettering the law of this country as to the very matters with reference to which they are charging him here with having entered into a conspiracy to rob this Government.

From what I have said, gentlemen of the jury, you will see that the law has placed this matter of increasing and expediting the mail service in the discretion of the Postmaster-General, or, if the prosecution will have it so, of the Second Assistant Postmaster-General. Suppose he makes mistakes in exercising this discretion. Is he to be punished for it? Are you to sit here in judgment upon the question whether he made a mistake or not? Not at all. Suppose he is imposed upon by somebody. Is that enough proof in this case? Not at all. The law has required him to decide when expedition or increase or both are necessary. Is it for you or this court to try the question whether he was right in his judgment? If so, every executive officer from the President down is in constant peril. The Secretary of the Interior, who is exercising day by day his discretion over that vast department, could not sit in his office an hour if any doctrine of that kind were to prevail. No, gentlemen, if he can be tried at all for his executive acts, for his exercise of the discretion cast upon him by the law, it must be for having corruptly exercised the duties of his office for the purpose of gain and at the expense of the Government. Why, gentlemen, just look at this for a moment. The country is developing, as I have said, with unparalleled rapidity. Men were flocking into these new States and these Territories by the tens and the hundreds of thousands, and developing the resources of the country to the extent of millions on millions annually. They wanted mails, and they wanted them often, and they wanted them speedily, and they were entitled to have them. They applied for them, as I will presently show, and as the records of the department show. It was within the power of the Postmaster-General; or if it must be so, of the Second Assistant Postmaster-General, to grant that which they applied for, and it is proposed in this case that you shall try the question whether he granted one trip too many or one trip too few, or made the schedule a few hours too short or a few hours too long, and we are to have the spectacle here of a jury sitting in judgment upon the judgment of the Second Assistant Postmaster-General. That will not do, gentlemen, and the court will tell you, I am sure—that is my prediction about it—that that will not do. I repeat, therefore, that if they can try this question at all in this court they must go far beyond that. They must show that it was an arbitrary and wanton exercise of his power under the law and for the purpose of defrauding this Government. You are not here as a court of review. You are not here sitting as a court of equity to determine what is right between contractor and subcontractor. They must go far beyond what I have said. They must show, as I said, that it was a willful and a wanton and totally unauthorized and wicked and corrupt exercise of this official discretion which the law has cast upon him, and which he was bound under his oath of office to exercise. He could not

sit there and say, "I will not listen to these applications for increase and expedition of service." He could not sit there and say, "It will cost too much, and therefore I will not grant it." That was none of his business. His business was to ascertain whether or not it was reasonably proper to put that service upon these routes, and then, no matter what the cost, it was his duty to give the people making application for it that service. He was bound to exercise that discretion, to discharge the duty which was enforced upon him by the law.

Now, gentlemen, let us inquire what it was upon which General Brady acted in making these increases and expedition that have been complained of so loudly in the presence of this jury and in the presence of this vast nation. And just at this point I will say from the time of my first connection with this case, knowing something about it, derived, as a matter of course, through my client, when I could see every day the press teeming with abuse of my client, and at the same time withholding the truth from the people, endeavoring thereby to make an unfavorable impression upon your mind, [indicating juror,] and yours, [indicating another juror,] and yours, [indicating another juror,] and the mind of every other intelligent reading man in this country, to the disadvantage of my client, it was a painful thing to me; and it is a painful thing to me that the truth has been kept thus far from you, and will be kept from you until it is brought forth in the evidence in this case. I propose to state to you, gentlemen of the jury, what it will be.

Mr. MERRICK. As Mr. Wilson is about to enter upon a new point, your honor, I will suggest that it would be better for the court to take its recess now, as it is now within a few minutes of the usual time for the recess.

The COURT. If Mr. Wilson desires it we will take a recess.

Mr. WILSON. It would suit me at this point better than at any other.

The COURT. We will take a recess for half an hour then.

Thereupon (at 12 o'clock and 20 minutes p. m.) the court took a recess.

AFTER RECESS.

Mr. WILSON. May it please your honor, and gentlemen of the jury, when the court took its recess I was about beginning to inquire as to what it was upon which General Brady acted in making these orders for increase and expedition of service. From anything that has thus far been stated to you by the prosecution you would infer that he had acted in a willful, arbitrary, and wanton way, and that his acts were willful and arbitrary and wanton and unsupported acts, granted without reason, and where the service was not needed, and that they were the naked offspring of a corrupt combination between General Brady and these contractors. Anybody coming into this court-room and listening to this case as stated by this prosecution would suppose that General Brady was here upon his trial for having arbitrarily and wantonly done acts which were forbidden by law, and were in no way justified by the needs of the public service. Now, gentlemen, I say to you that nothing is further from the truth in this case; and the records and files of the Post-Office Department which the gentleman who addressed you for nine hours and a half has had under his special custody for a year will

show, as he knew when he made that statement, that nothing was further from the truth.

Mark now, gentlemen, what this indictment charges against my client so far as the matter of overt acts is concerned. They say that he made these orders when the service was not needed, and they say that he knew when he made them that it was not needed. They have repeated that as to every overt act, some nineteen or twenty times in this indictment, and Colonel Bliss has repeated that *ad nauseam* before this jury. I assure you that the files of that department will show when they are brought before you, you being the judges now between Colonel Bliss and myself, that these expeditions and increases were made upon the earnest and persistent petitions of officers of the Army from General Sherman down, of judges of the courts, of internal-revenue officers, of boards of trade, of governors of States and governors of Territories and ex-governors of States and Territories, of bankers and merchants, of such men as Senator Hill and Senator Teller, now the Secretary of the Interior, of Representatives in Congress, of Delegates in Congress and numerous private citizens. If it becomes necessary we will bring many of these distinguished gentlemen into your presence to testify whether or not these recommendations thus urgently and persistently made and repeated by them were recommendations made by them in good faith.

It is claimed as I understand it that petitions were improperly presented, that they were fraudulently transmitted to the department. I know nothing about how these petitions came into existence. I know nothing about the writing of these letters. I know nothing about who procured them to be made or who procured them to be written or who procured them to be transmitted, and my client knows nothing about it. He sat there in his office as Second Assistant Postmaster-General. They came to him in the ordinary course of business, sent thereby these distinguished men, urging him to do this very thing. I do know that they came there and I do know that upon the faith of them and believing in their integrity my client made these orders that these distinguished men, who were upon the ground, and ought to know, said were needed for the good of the country. I am sure, gentlemen, that when you hear them read you will be amazed, not that the orders were made, but that the learned counsel for this Government failed to give you those significant facts in this case. You would have been more amazed if, after such solicitation, these orders had not been granted. He has spent hours of the time before you splitting hairs, drawing nice distinctions in the construction of the law, as though upon these nice, hair-splitting distinctions of what is the true construction of the law a man could be sent to the penitentiary, or could have the imputation of fraud and dishonor stamped upon him because he might have construed the law a little differently from what somebody else would construe that same law. He has stood here indulging in little quibbles, such as you would expect to hear from some attorney in an ordinary horse-trade case, or a matter of that sort.

Mr. MERRICK. Allow me to interrupt you a moment, brother Wilson. As I said, I have no objection to the largest latitude, but I think my brother is arguing this case as though he was summing it up.

The COURT. It seems to me to be rather latitudinous, but I did not feel called upon to interrupt as you seem to have consented, when Mr. Wilson had the floor, that he should have the largest liberty.

Mr. MERRICK. I do intend to allow him the largest liberty ever allowed in an opening, but instead of an opening address he appears to *be summing up*.

Mr. TOTTEN. If he is doing that he is very properly following the example of Mr. Bliss.

Mr. MERRICK. I think not.

The COURT. No ; I think myself, Judge Wilson, that you have gone beyond the boundary of a proper opening.

Mr. WILSON. I do not intend to go beyond following in the exact track of the gentleman who preceded me. When I sat here yesterday morning one of my associates who sat behind me called my attention to the fact that Colonel Bliss was arguing this case, and a gentleman of pretty large experience in the law, who happened to drop in here and was waiting to see me, as I went out, expressed some surprise that the summing up of this case should have come so soon, as he supposed the trial was going to last for some time. He supposed that the counsel was then summing up the case finally.

The COURT. You are going beyond his limit.

Mr. WILSON. If your honor please, I do not, as a matter of course, want to transgress upon any of the rules or the proprieties of the occasion.

The COURT. I want you to go quite as far, if you choose, as the opening on the other side ; but, talking about what the counsel——

Mr. WILSON. [Interposing.] What I was actually stating to the jury was what was disclosed by the files of the department, which the counsel had not stated to the jury.

The COURT. Yes.

Mr. WILSON. And then I was proceeding to state what the files of the department did show, and to state to the jury that we propose to prove by these men, whom I have named, what the facts are. That is all.

The COURT. All that is legitimate.

Mr. WILSON. Perhaps I put it too much in an argumentative form ; but the facts themselves are a fearful argument.

The COURT. It was rather a controversial style that you used.

Mr. WILSON. Yes.

Mr. TOTTEN. We get into that habit here, your honor.

Mr. WILSON. Yes ; we have to struggle with each other, and with the court. I will endeavor to keep strictly within the bounds of propriety.

The COURT. If you exhaust your valid grounds at this stage of the case you may have to take a new position when you come to the summing up proper, I should say.

Mr. WILSON. I have some associate counsel, and I will let them take care of that, like the elk running through the woods with the long horns.

But, gentlemen, I was about to say, and I will try and keep within the proper rule, that the great illuminating truth in this case, that which will shed light upon it, consists in the files of the Post-Office Department. I say to you that when the testimony is presented you will find the files of this department burdened with petitions of men of the very highest character, asking for this service. That is within the rule, is it not ?

The COURT. Oh, yes ; that is all right.

Mr. WILSON. Just here, I think, I may venture to make a prediction as a mode of stating a fact, and that is, that you will not find any of these gentlemen brought here by the prosecution in this case to testify in regard to the facts of it. Colonel Bliss has taken occasion to say to you that he has men to produce from way off in Oregon, and from vari-

ous places. I am not going to state to you or to conjecture what manner of men they are; but there are a good many witnesses that they might procure right here in Washington.

Mr. MERRICK. Now you are going beyond the limits.

Mr. WILSON. No.

Mr. MERRICK. We will bring all the witnesses that are necessary.

Mr. WILSON. Will you bring Secretary Teller?

Mr. MERRICK. I shall not bring your witnesses. I shall bring my own witnesses, if I want any.

Mr. WILSON. Will you bring General Sherman?

Mr. MERRICK. There will be more witnesses than you want.

Mr. TOTTEN. Now Mr. Merrick——

Mr. MERRICK. [Interposing.] He is asking me questions. Stop him if you do not like it.

Mr. TOTTEN. You began it.

Mr. MERRICK. Stop him if you object to it.

Mr. WILSON. I say to you, gentlemen, that we propose to prove our side of this case (unless they will bring these witnesses themselves) by such men as I have named. By their testimony we expect to show this jury that these increases and expeditions that were made by General Brady were made because the public service and the needs of the people of that region of country demanded it, and it was recommended by them. I expect to back up the files of this department by the testimony of that class of men; and if my friend can break them down with such witnesses as he may bring here—I have nothing to say about them now—he is welcome to do it. Do not lose sight, gentlemen, of the fact that the charge is that he granted service when he knew it was not needed. They must prove that he knew it was not needed. Do not lose sight of that fact. That is the charge against him so far as his official acts are concerned. Now, keeping that in mind, I desire to bring your attention to one case, by way of illustrating all. I take the case of the route from Bismarck to Tongue River. I take that case because Mr. Bliss has dwelt upon it with emphasis, and because his honor has once or twice referred to it in deciding preliminary questions. It was originally let for \$2,350, and it was increased and expedited until the cost went up to \$35,000, and then it was again increased in trips until it ran up to \$70,000. That is the route as to which Colonel Bliss was kind enough to say to the jury that if the affidavit of the contractor had been accepted by General Brady the compensation would have been about \$140,000, I think.

Mr. HINE. One hundred and sixty thousand dollars.

Mr. WILSON. One hundred and sixty thousand dollars, my brother Hine says. Now, let me show you a map [exhibiting a map to the jury]. Do not be embarrassed by the size of the map. I am not going to travel all over this country. Bismarck is right there [indicating], Fort Keogh and Miles City right there [indicating]. At the time this thing was asked for, the Northern Pacific Railroad had been constructed out to Bismarck [indicating]. The Northern Pacific Railroad was projected right on out this way [indicating] by the Crow reservation and running on to the Pacific coast. It had gotten here [indicating]. Now as to the mail: the mail from here [indicating] entered this region of the country. Here [indicating] is the Indian reservation with reference to which the military had to deal. Here [indicating] is a vast mineral region, one of the richest on this continent. In order to get the mail from this point [indicating] around into this country here [indicating] they had to go down here to Saint Paul. They had to come

from this direction [indicating] down here to Saint Paul, and then they had to go down to Sioux City, and on down to Omaha and then take the Union Pacific Railroad out here to Ogden, which is just by Salt Lake City here [indicating]. Then they took the Utah and Northern Railroad as far as it was constructed to the end of that road, and then by the ordinary star route up here to Helena, in Montana. Then they came back into this country here [indicating], that was the route. More than two thousand miles of travel was required to get from that point across here [indicating] into this country. There was another thing that could be done. Here is the Missouri River [indicating] running around up here [indicating] in that direction. Now here [indicating] are the military posts. There is navigation on that river perhaps two months in the year. When there was navigation they had a sort of temporary service running around in this way [indicating] and back. Two months in the year, with a long carriage, they could get the mails around there. Now, what happened? In 1877, on the 3d of March, by an act approved that day the Congress of the United States made that number [exhibiting statute to the jury] of new postal routes, page after page of them. Look at them. Amongst the postal routes that they made, for which star-route service was necessary, was this from Bismarck to the military post at the mouth of Tongue River. One line and one word of that statute made this post route. Congress made that route running across from Bismarck to Fort Keogh and Miles City, which is at the mouth of Tongue River. They said "the military post." Well, now, that region of country was the country that was the hunting ground of those Indians with whom we had the fearful struggle in which General Custer lost his life. Just a little to the westward of Fort Keogh is the point where the Custer battle was fought. It was important to have this route running across there so that the mails could be carried in two hundred and fifty miles instead of going on this circuitous route of more than two thousand miles, and especially in view of the situation with reference to the Army and the Indian service of the country. I presume this importance was quite apparent to Congress. At all events from motives that were satisfactory to the Congressional mind that route was created. Now, the first thing that happened with reference to it was that the Post-Office Department, as it was its duty to do, advertised to let the mails for that route. They failed to succeed in letting them, just why it is not important to inquire, and yet I may say that the Indian troubles had something to do with it. But at all events it was not let. Now, in 1878 these annual lettings were advertised and this route was advertised for among many others. At that letting Mr. Miner bid the route off for \$2,350. Colonel Bliss told you in making his statement that the gentleman who was connected with Mr. Miner had attempted to get the Government to abandon the service on that route. Why? In this process of bidding these men bid, as I said awhile ago, on a great number of routes, and not knowing really how much it would cost or how difficult the service might be Mr. Miner found he had bid a great deal too low for that service, and it would have been a very delightful thing to have gotten rid of that service altogether. It is not an uncommon thing that when a contractor gets a bad bargain he is very anxious to have the Government abandon the route. There is a paper on file in this case which will be brought before you, an affidavit made by a man in the interest of the contractor asking the department not to compel them to put the service on this route. But the Congress of the United States *had made the route*, and there was,

as I will show you in a moment, great necessity for having that mail on that route, and the Government would not listen to the contractor who was consulting his own interest, or the subcontractor who was consulting his own interest, but said, "No, sir; this service must be performed." At that time, just as happened in a thousand cases, they did not even know the length of that route. The ground had never been surveyed. The Northern Pacific Railroad Company, whose line went right along where this route was located—I am keeping right amongst the files of this case, your honor, in all I am stating now—had not even surveyed their line, so that the department and even Congress did not know what the distance was. They supposed it was two hundred and fifty miles. They advertised it for two hundred and fifty miles. Afterwards communication was had with the Northern Pacific Railroad Company to ascertain what the real distance was, and the best information they could get from that company was that it was something like three hundred and twenty miles. [To counsel.] Do I state it correctly?

Mr. HINE. Three hundred and ten miles.

Mr. WILSON. Of course, I have not had an opportunity to keep all these records before me. I have to trust somewhat to memory, yet, I will endeavor to be reasonably accurate in my statements. As I say, in that way, they found out what the length of this route was. The department had to decide whether they would abandon this service, or have it carried on. These gentlemen say that because the Second Assistant Postmaster-General decided to put the service on when the contractor or his agent was trying to avoid putting it on, he must have been engaged in a fraud in the interest of some contractor. That is the argument that has been made. I think I do not improperly characterize the statement of Colonel Bliss by saying that it was his argument before you.

Now, as I have said to you, here at one end of this route was Bismarck, a city of growing importance. At the other end was Miles City, a place of considerable importance. Right across the river from Miles City was Fort Keogh, a fourteen-company military post of the United States, and that is what the United States was very anxious to reach. Saint Paul was the headquarters of that military division. General Miles was in command at Fort Keogh. They had had these serious troubles with the Indians, and speedy communication was of the last importance to the Government as well as to all the people of that region.

Now, gentlemen, what happened? What do these files show? They show exactly this, that General Miles and the other officers there at Fort Keogh persistently and continuously urged, petitioned, wrote letters to the Post-Office Department, insisted upon this service and insisted upon this increase and expedition. General Miles not only wrote to the department himself, but, not getting the expedition, not getting the service as he desired it, he wrote to the Secretary of War on the subject, and asked the Secretary of War to intervene and have the service put on, which he insisted was of great importance to the country. The Secretary of War transmitted that letter to the Post-Office Department, by way of stimulating that department to perform this service. Bankers at Bismarck, citizens at Bismarck, insisted upon having this service. The board of trade at Saint Paul and at Minneapolis sent their petitions to this department asking them to put on this service; and in obedience to these constant solicitations, and this pressure which my client had no right to disregard, this service, of which they so much complain, was put upon this route and expedited and increased.

as has been stated to you by the prosecution. It is in the face of the evidence which they have had for a year in their possession that they stand before you to say that Mr. Brady, when he put that service on, knew it was not needed.

In the presence of that record, which you will find as I have stated it, one department of this Government insists that an officer of another department of this Government shall be branded as a criminal, for having done that which its own officers pressed and urged him to do.

I shall have occasion, gentlemen, further along, to refer to this same route in another connection. I have used this route at this point with reference to the question of whether he put on service that was not needed, and whether he knew it was not needed, as charged in this indictment. I assure you that, without a single exception, you will find the action of my client has been based upon such recommendations, and I propose to call your attention to the very routes named in the indictment, for a two-fold purpose. I regret to weary you with this matter, but you know Colonel Bliss, on Friday last, went over these routes one by one, and then he was so well satisfied with the admirable manner in which he did it, that he repeated it again on yesterday, going over precisely the same ground. My first purpose in inviting your attention to them is to meet one of the comparisons that Mr. Bliss indulged in; and the other is with reference to whether or not this service was needed; and to state to you facts as we expect to establish them by testimony. One of the routes on which it is charged in this indictment the defendants were guilty of conspiracy and great fraud upon the Government is route No. 46247, from Redding to Alturas, in California. This route, during the contract term of 1874-'8 was No. 46254, three trips a week, at a speed of one and a half miles an hour and cost \$11,614 a year. Now, General Brady had nothing to do with that contract term. He did not make the advertisement. He was not Second Assistant Postmaster-General when that letting occurred. It was in the middle of that contract term when he came into office. The same route under Mr. Brady's administration, with six trips a week and a speed of three miles an hour, cost \$35,928. A pro rata increase for trips alone under the contract of 1874-'8 would have been \$23,228. Just simply multiplying the trips of 1874-'8, and adding to them the trips of the letting of 1878 would have made that route cost \$23,228. If the speed had been brought up to that at which the mail was carried in the contract term of 1878 the cost would have been more than \$40,000. So, that, comparing the letting of that very route they are complaining of with the letting for the contract term immediately previous, we find the comparison is in our favor. Another route upon which it is charged in this indictment that great frauds were committed, is No. 46132, from Julian to Colton, in California. The distance is one hundred and twenty miles. It was let, service to begin July 1, 1878, one trip per week, at a little over two miles an hour, at \$1,180; increased to three trips a week, and the speed accelerated to about four miles an hour and the cost brought up to \$8,910. Under the contract term of 1874-'8, this route was No. 46133. The distance was the same. There was one trip a week and a speed of about three miles an hour. The cost was \$1,200. If it had been made three trips a week the cost would have been \$3,600. If the speed had been equal to that at which the mails were carried by one of these defendants the cost would have been nearly if not quite the same. At this contract letting the service was about the same.

Another route upon which it is charged in this indictment that frauds were committed is No. 41155, from The Dalles to Baker City. You recol-

lect a good deal was said about that. The distance is about two hundred and seventy-five miles, the schedule within a fraction of four miles an hour. The cost was \$72,500 a year. This the prosecution claimed was a very great fraud on the Government. Compared with the cost of the same service during the contract term 1874-'8, it will look very differently. There were two routes, from The Dalles to Baker City, 44110, from The Dalles to Canyon City, and another from Canyon City to Baker City. Mr. Bliss alluded to both of these routes. The distance was the same. The speed was about two miles an hour. The trips were two a week. The cost was \$14,500 a year, and had it been made daily the pro rata cost would have been \$50,750. Had the speed been made the same the cost would have been over \$100,000 a year. I am not talking about men and horses, gentlemen. I am talking about the pro rata cost. You need not have any doubt in your minds in regard to that so far as these comparisons are concerned.

Route No. 44460, from Canyon City to Camp McDermott, is another route upon which we are charged with great fraud. There were three trips a week, and the speed was three miles an hour. The contractors received \$21,500 a year. During the contract term, 1874-'8, this route was No. 44152, and Mr. Huntley, for one trip a week, at a speed of one and three-quarter miles an hour, received \$5,190. If he had carried the mail three times a week, and been paid pro rata, he would have received \$17,790 a year; and if the speed had been brought up to three miles an hour the pro rata would have been about \$30,000 a year.

Now, of the routes in Colorado, seven in number, on which these defendants are charged with having defrauded the United States out of large sums of money, six of these supplied the mail to important mining centers, which, with two exceptions, are in the San Juan country. I do not intend to offer in evidence this picture on the back of this railroad map [exhibiting a map], but here is a very accurate picture of the Grand Cañon on the Arkansas where the Arkansas River runs through the mountains, there being a gorge there wide enough for one road, and with precipitous cliffs about twenty-five hundred feet high on either side. I want to show you that as giving some indication of the mountainous character of that country, and while mountainous, it is one of the richest countries in minerals that is now known to the world. I shall have occasion to use that map presently, and I want you to just glance your eye at it, and if my friends are not satisfied with that, if you will get the map that is issued by the War Department you will get some idea of this mountainous country. There are hundreds of miles that have to be traveled sometimes in order to find a gorge like that through which you can pass from one valley or region into another. You cannot strike out in straight lines, gentlemen, and get to places. There is a representation of what one railroad company has been doing within the last four or five years, in order to get around into the fastnesses of these mountainous regions, building in there because of the wealth that has long been hidden in the earth and is now for the first time being brought to sight and converted to the use of man. Six of these routes that I am about to speak of supplied mails to important mining centers, which, with two exceptions, were in San Juan. The two exceptions were Pueblo to Rosita and Saint Charles to Greenhorn. You have heard of Saint Charles to Greenhorn on divers and sundry occasions within the last three or four days. Greenhorn is an important mining town in the eastern range of the western mountains of California. It is laid down here [exhibiting a map]. There is a place on this map *right here* [indicating] called Greenhorn.

one month's extra pay for service on that portion of the route that was thus discontinued. That is their complaint. You remember how Colonel Bliss stated it.

Now, gentlemen. I simply want to go back and call your attention to what I said awhile ago. Whenever the department adds on to a route it is made a part of the contract. They have a right to do it, and whenever they do it that becomes a binding contract on the Government, and the effect of that contract, if they discontinue that service, is that the contractor is entitled to his month's pay. It is so stipulated in all the advertisements for proposals. It is so stipulated in the law. The courts and the Attorney-General have decided that the contractor is entitled to it. Now, my point is that the testimony in this case will show that the Postmaster-General, or the Second Assistant Postmaster-General, was entirely justifiable in putting Agate on. He had that which would justify him in doing it. As soon as he found that it was not necessary, he took it off and gave to the contractor just what the law entitled him to, to wit, one month's extra pay.

Mr. TOTTEN. It amounted to about \$30.

Mr. WILSON. About \$30 it amounted to.

Mr. TOTTEN. Thirty dollars and eighty three cents.

Mr. WILSON. And, gentlemen, this thing will be running through your minds: If Brady and these gentlemen were conspiring together to get money out of the Treasury of the United States fraudulently, they would get a great deal more by keeping Agate on than by taking Agate off and only getting a month's extra pay; and if he were engaged in defrauding the Government and that was his purpose, instead of knocking Agate off he would have kept Agate on. And you will begin to inquire now, since I have stated these facts to you, "Can it be possible that a man who was engaged in defrauding the Government, who had entered into a conspiracy to defraud the Government, would thus destroy that very thing which would give him money and do that which would give him nothing comparatively?" Now, so much for Agate.

Now, it is charged in addition, in connection with this indictment, that the contractor willfully made a false oath to obtain additional and expedited service on this route. What the contractor did do was this: He addressed a letter to the Second Assistant Postmaster-General, in which he stated that to carry the mails on this route 38135 three times a week on the then schedule, which was a very slow one, would require one man and one animal. Now, is there anything in that to attract the attention of General Brady or anybody else; to excite the suspicion of anybody that there was anything wrong about that? It was only thirty-five miles, and a very slow time. And then he further said that to carry it three times a week—that is, three times as many times as the contract required—would require two men and four animals. You will begin to inquire, in your own minds, what there is in that to excite the suspicion of any officer that there was any fraud in it, or put him upon further inquiry. The distance was thirty-five miles. He had sixteen hours in which to make it. I suppose nobody will dispute that a man could ride a horse that distance, thirty-five miles, in sixteen hours, three times a week. But when you come to make that distance of thirty-five miles every day in seven hours, is anybody going to say that it would not require at least four horses and two men to do that work? Now, you see Colonel Bliss has pressed this thing upon you as being one of the badges of fraud in this case, and I am thus particular to state what had happened at the Greenhorn end of this

line, as a justification for making the seven trips a week and the seven hours' time, and I am calling your attention back to these additional facts again to see whether there is anything in connection with that which would excite the suspicion of any honest official that there was anything wrong in the matter, or which can excite any suspicion in the mind of anybody that General Brady, in making the order for that increase, was acting for the purpose of defrauding the Government of the United States.

Now, I next come to route 38134, from Pueblo to Rosita. Pueblo was the terminus of the Denver and Rio Grande Railroad. Here it is, and here is Rosita out here [indicating on map]. Now, gentlemen, in 1878, from Pueblo to Rosita was a star route, and it is a significant fact, to which I will call your attention hereafter, that wherever these routes have run all through that country, pioneered the way, these railroads have followed right over the same ground, and that has happened all over the United States from the beginning of this Government down to this hour, as I will take occasion to show you after awhile. Now, Pueblo was the terminus of the Denver and Rio Grande Railroad. Rosita is forty-nine miles from Pueblo, and is situated at the northern end of this valley [indicating on map], as I have shown you. It is right in the mountains there [indicating on map]. There are important and valuable mines near Rosita, making it such a prominent point that the Denver and Rio Grande Railroad Company has already built a branch of its road as far as West Lynne, a few miles northwest of Rosita. Now, it would be no use for these gentlemen to say to you that Rosita was an unimportant place, for if it had been of no consequence this Denver and Rio Grande Railroad Company, headed by some of the most sagacious men of this country, as you gentlemen know, would never have built a railroad to it forty-nine miles long in that mountainous country. To reach Rosita from Pueblo the mountains have to be crossed at a gap called Silver Park, about midway between Canyon City and Greenhorn. The route was a difficult one, because there was a branch of the Arkansas River to be crossed near Greenwood, one of the post-offices on the line, and also because of the character of the mountains to be crossed. As originally let, the service was for once a week, at a speed of three miles an hour. In July, 1879, six trips were added, making it a daily service, and the speed was increased by two miles an hour, and the compensation raised to \$3,160. We say that the service was necessary, and we expect to prove to you that it was necessary. We say the fact is demonstrated by the Denver and Rio Grande Railroad building its road from Pueblo to Canyon City, and from Canyon City to within a few miles of Rosita, and by this time the road to Rosita is completed. We say the pay for the additional service was not exorbitant when the character of the country to be traversed, the greater part of it being mountainous, is taken into consideration.

Now, gentlemen, just there allow me another remark in connection with this subject. Do you not see that the increased number of men and animals to carry the mails over a level road like Pennsylvania avenue, or any of the ordinary roads in a level country, would be very far less and very far different from the number of men and animals required to carry it at an increased speed over a rugged and mountainous country. You see that is a factor in this problem.

The COURT. Judge Wilson, I would like to make an inquiry of you to get some information. In regard to this increase of expedition, I can very well understand that where *the mail is to be carried once a week,*

say a distance of thirty-five miles, one man and one horse could do it, and may be they could do it twice a week ; and indeed one man and one horse might do it three times a week. But in regard to the manner of expedition alone, suppose there was a contract to carry the mail between two points, at the rate of, say, two miles an hour, and afterward the rate was increased to three miles an hour, would that entitle the contractor to a 50 per cent. allowance for the increase from two miles an hour to three miles an hour, according to the practice of the department ?

Mr. WILSON. No, sir.

The COURT. Suppose there would be no increase of speed necessary, how would you gauge the increase of expedition—by what rate ?

Mr. WILSON. Now, your honor, that is just one of the things that I undertook to talk to the jury about at the outset of my remarks.

The COURT. If you take the rate of speed where we have thirty-five miles at two miles an hour by the original contract, it will be just as easy to make the distance in a day at one rate of speed as another. If you increase to three miles an hour, how much increase of compensation would be made ?

Mr. WILSON. Now, then, if your honor will allow me, I will try to answer that question. You will remember what the statute provides on that subject. It says that there ought to be two things taken into consideration.

The COURT. Yes ; two elements.

Mr. WILSON. Yes ; two elements. You see it is impossible for the department to establish any iron rule or rigid rule or inflexible rule on that subject, and I will show you the reason. The very country that I am dealing with now enables me to make that explanation perhaps a little more fully. I will take this route thirty-five miles long, at a speed of two miles an hour. Suppose that road is perfectly level ground, and a good road.

The COURT. He has sixteen hours in which to make that by his contract.

Mr. WILSON. Exactly. We will say that he has sixteen hours in which to do it. Now, it is on a level road ; it is good road, and he can make it without any trouble at all. Now, they come to increase the expedition, to expedite that route, put it on a faster schedule. It would not take very many additional men and horses on that smooth, level road to carry the mail according to the expedition.

The COURT. I should think that a man might just as well make his twenty-five miles in eight hours as in sixteen.

Mr. WILSON. But that is not the point, your honor.

The COURT. And there is no increase of stock necessary.

Mr. WILSON. Let me get through with my explanation.

Mr. MERRICK. [Interposing.] That is the point.

Mr. WILSON. [To Mr. Merrick.] I will get this all right. [To the court.] Now, suppose that road goes over a mountain where the horses have to climb an ascent, and it is rough and rugged. When you come to get at the additional number of men and horses on a road like that, it would be very different from the number of men and horses on a level road, because the wear and tear, so to speak, is greater ; the effort that has to be made by the horses is greater. Horses cannot go as long a distance when they are climbing a mountain at an increased rate of speed as they can on level ground, and the consequence is that when you come to expedite on a route like that it takes a greater excess of men and horses than it does when you are dealing with the

level road. Therefore, when the department comes to increase and expedite all these things have to be taken into consideration. Now, let me give you another illustration.

The COURT. I can understand how there would be a pro rata increase in proportion to the increase of the stock or of the men employed. But where the original contract was for a very slow rate of speed, and that speed was afterwards increased, in the technical term, expedited, I want to know if there is any rule, either in law or the regulations of the department, by which the pay is increased according to the increase of speed?

Mr. WILSON. No, there is only this rule, if your honor please.

Mr. MERRICK. Here is the section.

The COURT. To what section do you refer?

Mr. MERRICK. Here it is:

No extra allowance shall be made for any increase of expedition in carrying the mail unless thereby the employment of additional stock and carriers is made necessary, and in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution.

There cannot be any compensation unless additional stock and carriers are absolutely necessary, and then it shall not be greater—it may in fact be less—but it shall not be greater than the proportion of stock originally employed bears to the proportion of charge originally, in the proportion of the stock now needed to the charge now given.

The COURT. If the stock then was increased, there was an allowance upon the increase of stock?

Mr. MERRICK. Yes.

The COURT. And a similar and proportional allowance for the increase of expedition.

Mr. INGERSOLL. For the stock and men?

The COURT. I understand; stock and men?

Mr. MERRICK. Stock and carriers.

Mr. WILSON. That was the rule. It was one of those things that it is so difficult to arrive at, and about which there may be such great diversity of opinion, that the nearest that has ever been done towards laying down a rule is just the section that Mr. Merrick has just now read. That was fixed by Congress as the standard or the mode of getting at it.

The COURT. I am not talking about that. But it occurred to me as a matter that might be inquired about by the jury themselves in listening to your argument. The increase in the number of men and in the number of stock might be necessary for the purpose of increasing expedition. An allowance was made for the increase of the men and stock, and by paying for the men and the stock you get the execution. But then the law seems to provide that an allowance may be made for the expedition.

Mr. WILSON. Oh, no; your honor.

Mr. TOTTEN. For the increase of stock and men.

The COURT. It is for the increase of stock and men, and there is nothing allowed for expedition?

Mr. WILSON. Oh, no, your honor, it is the other way. They simply fix the rate of compensation for expedition by reference to the additional number of men and horses required to perform the service. That is all it is used for.

The COURT. How is it, then, that allowances, if I mistake not—I may be under a misapprehension—may be made on both these accounts?

Mr. WILSON. You are entirely mistaken, your honor.

Mr. TOTTEN. Take for instance the thirty-five mile route, and instead of going once a week, going seven times a week, and instead of going two miles an hour going five miles an hour. Your honor will readily see no horse on earth could stand that more than a week. Now it would require two good horses, probably three, probably four, to carry the mail over that thirty-five mile route. So that the faster you go and the more frequently you go the more men and the more horses you are required to have.

Mr. MERRICK. Mr. Totten is confusing things.

Mr. WILSON. Oh, no.

Mr. MERRICK. I was going to say that he confused the increase of service with the increase of speed. Increase in the number of trips is provided for in one way. Where the speed is increased the provision is this: You must first state that additional stock and men are necessary. Then when you have stated that they are necessary you have your proportion. As the original stock and carriers needed for expedition is to the amount paid on the original contract, so are the stock and carriers needed on the expedition to the price to be paid on the new schedule. That is, you cannot go beyond it; you can stop anywhere inside of it. First know that they are needed, then ascertain how many are needed.

Mr. TOTTEN. Your honor, I think, is troubled about this; that the man is to be allowed something for the fact that his service is to be expedited. Now, I do not understand that the statute allows that. The statute allows him for carrying the mail seven times a week seven times as much as he got for carrying it once.

The COURT. That I understand.

Mr. TOTTEN. And if he expedites the time and goes in five hours what he used to go in ten he is entitled to so much for additional wear and tear for wagons and stock and so on in carrying the mail?

Mr. MERRICK. That used to be the rule, but it has not been the rule under Mr. Brady.

Mr. WILSON. It has been the case under Mr. Brady.

Mr. INGERSOLL. Let me explain this so the court will understand it. Here is a route say a hundred miles, the trip is once a week, we will say at three miles an hour for \$5,000. Now, it is to be expedited to six miles an hour. They ask: "How many men and horses do you use now?" The man says, "We are using now five men and fifteen horses, and we get \$5,000, and it is three miles an hour, but if you wish to put it up to six it will take ten men and forty horses." Now, you add these together. The ten men and forty horses would make fifty, and the five men and fifteen horses would make twenty. Now, if you are going to expedite it to six miles it increases the amount of compensation twice and a half, so that a route of one hundred miles that was let at \$5,000, three miles an hour, if expedited to six would come to \$12,500—twice and a half as much. Now, there is no expedition that takes place except in proportion, and that proportion is as the number required under the expedition is to the number required under the original contract. Now, if this service was once a week, then the amount of compensation would be \$12,500 for the year, and if they increased to three trips three times that amount, or seven trips seven times that amount. And there is no case, as I understand except where the expedition, that is, the price, has been regulated by the proportion that the number of men and animals under the expedition bore to the number of men and animals under the original contract. That is the way I understand it.

Mr. WILSON. Now, gentlemen of the jury, you will see that the Government is proposing to send my client to the penitentiary because of the exercise of his judgment upon a matter with regard to which his honor, and Mr. Merrick, and Mr. Totten, and Colonel Ingersoll, and several other gentlemen have been engaged in trying to find out what was the true rule. They want him to be absolutely infallible, and here, within a half hour, they have been trying to reach what is the right thing in regard to this matter, and I will bet there is not one of these gentlemen who have been talking here who understand it exactly alike now. I do not think there are any of them understand it, excepting myself.

Mr. MCSWEENEY. You and I understand it alike.

Mr. WILSON. There is my friend McSweeney. He comes from the State in which I was born. He can agree with himself in regard to it. Do you not see now, gentlemen, how it is? And that is one of the best illustrations of this case that could possibly have happened. I am glad it occurred.

The COURT. Oh, well, Mr. Wilson, it is not worth while spending time upon a matter of that kind. Nobody is going to be punished in this court or in this country for a mere error of judgment, whether in his private affairs or in public affairs. It is a matter of corrupt motive and purpose, and that is the only question, it seems to me, in this case. Whatever error of judgment may have been committed by any of these parties is not a penal offense. But, if the parties have entered into a conspiracy, with a corrupt motive, to defraud the Government, that is another thing.

Mr. MERRICK. That is all the prosecution claims.

Mr. WILSON. I am glad your honor has made that observation.

Mr. MERRICK. I am glad, also.

Mr. WILSON. I am glad that your honor has made that observation, and I stated awhile ago that the court would say that to this jury at the proper time. If your honor please, that is just exactly what I was presenting to the jury awhile ago. But they say, in this indictment, that he made this expedition when he knew it was not needed, when he knew that this number of men and horses was not required, or ought to have known that they were not required, and I am presenting these things for the purpose of showing how utterly unreasonable that is in connection with this case, and at the proper time there will be put upon the stand gentlemen of large experience in this matter of the carriage of mails on one schedule and then upon an increased schedule. It will appear here in the course of this trial that when a mail sack is put upon a horse, and he is permitted to walk along at the rate of two or three miles an hour, he goes very comfortably and all right. But whenever a mining camp springs up, and it becomes necessary to get that mail in there, and the speed is increased to five miles an hour, he cannot carry on his back a mail sack that is unevenly divided as to its ends and go on a trot. Whenever the horse has to go in a trot, as the evidence will show, then you have to put on two horses and two vehicles. You cannot use a one-horse vehicle, because the roads in that country will not admit of it. Whenever you use a one-horse vehicle the wheels get out of the ruts and the vehicle whips the horse to death in his trotting along carrying this mail. Therefore, they are compelled to use two horses. Now, these are elements that enter into this case as explaining why it was that this large number of men and horses was necessary for the purpose of carrying these mails. It will be further illustrated by taking this Bismarck and Tongue River route. There was no

road through there at all. Nobody could tell just how many men and horses had to be used on that. Nobody could tell how much speed could be made. They did the best they could. When it came to be expedited then this troublesome problem came in, and they ascertained the best they could what was the additional number of men and animals, and the service was put on accordingly. Now, this has been a somewhat lengthy digression, gentlemen, but probably not an unprofitable one.

I was talking to you, gentlemen, about this San Juan country. Now the San Juan Mountains and the detached ranges are separated from the San Christo Range by the San Luis Valley.

Route No. 38145 originally extended from Fort Garland to Parrott City. It was one hundred and seventy-two miles in length. I have a map here that will show it. The great detour through the south had to be made to avoid the San Juan Mountains. [Indicating on map.] Now here is Fort Garland. Parrott City is away over here. The route passed through what is now a famous resort for tourists, called Taltec Gorge, and through which the Denver and Rio Grande Railroad passes. The San Juan Mountains divide the drainage of the Atlantic from that of the Pacific slope. The headwaters of the Colorado, which flow into the Gulf of California, and the springs from which start the Rio Grande, flowing into the Gulf of Mexico, are to be found there. The great San Juan mines are a short distance northwest of Parrott City. Within less than two years, on the line of the route from Garland to Parrott City, new cities have sprung into existence, and the Denver and Rio Grande Railroad has been built within twenty miles of Parrott City. The counsel for the prosecution claims that Mr. Brady, acting as the Second Assistant Postmaster-General, ought to have anticipated the wonderful development of this western country, and especially of the San Juan mining region. Now, who could have anticipated that within less than four years the Denver and Rio Grande Railroad Company would have built and have now in operation over one thousand miles of railroad; that the iron horse should be rushing through every gorge and climbing mountain ranges thousands of feet above tide-level?

Route 38145, which in 1877 was one hundred and seventy-two miles long, has been taken up from Garland to Durango, one hundred and fifty-two miles, by this same railroad. When this route was originally let, Parrott City and the intermediate points were comparatively unimportant places. Service was only advertised for once a week at a speed of less than one and three-quarter miles an hour, which was all that human foresight could at that time conceive to be necessary. By March, 1877, the Denver and Rio Grande Railroad had been carried as far as Alamosa, and it is now completed to Silverton, fifty miles north of Durango. The speed was increased to three and a half miles an hour and the cost was \$14,333 a year.

The next route is No. 38150, from Saguache to Lake City, ninety-five miles. Saguache is one of the points to which the Pueblo branch of the Denver and Rio Grande Railroad is now building, it having reached Villa Grove a short distance north of it. Saguache was on a route running from Canyon City to Del Norte, on which there was six times a week service. To get from Canyon City to Del Norte the route had to pass around what Mr. Bliss calls several impracticable mountains, and go on at least two sides of a triangle in more places than one. Now, Miner sublet this contract to Mr. Sanderson on the 15th day of May, 1878, as the contract on file in the contract office of the Post-Office Department will show. He gave it to him absolutely. Now, remember it is charged

as to this very thing, do not forget, gentlemen, that John R. Miner, for the purpose of defrauding the United States, drew the money from this route for the joint benefit of these defendants who were alleged to be conspirators. I want you to see whether that is going to be borne out by the testimony in this case. Miner sublet it to Sanderson absolutely. He gave it to him, turned it over to him. Miner did not receive a single solitary cent from Sanderson on account of it, or from the Post-Office Department on account of it. Mr. Sanderson put on the service and continued to carry it. Mr. Miner never drew a cent of pay for it, and save that his name appears upon the records of the Post-Office Department as the regular contractor, he has in no way appeared in connection with this contract. Mr. Sanderson, in applying for the increased service on this route, made the oath which, ordinarily, the original contractor is required to make. This fact shows that the department knew that Miner had ceased to have any connection with it, and that Mr. Sanderson had taken his place. The service was originally for three trips a week, at a speed of two and a half miles an hour. Lake City sprang into importance suddenly as a mining center. The whole country was filling up with people, and in October, 1878, four trips a week were added, and the speed was increased to over three miles an hour, bringing the cost up to \$18,251.61. If there was any fraud in connection with this route, Mr. Sanderson must have been a party to it. In the original indictment Mr. Sanderson appeared as one of the conspirators, named, however, by his initials only. In this indictment he has not been included; why, it is not for me to say. But notwithstanding the facts which I have stated, which appear of record in the Post-Office Department, and which are well known to the prosecution, it is averred in one of the overt acts, that this increase was obtained by a conspiracy between John R. Miner, John W. Dorsey, Stephen W. Dorsey, and the other defendants. Now, we do not say that there was anything wrong with respect to this matter so far as Mr. Sanderson is concerned. On the contrary we deny that there was anything wrong about it on the part of anybody, or anything improper in regard to it.

At that time from the northeast of Denver, from Los Pinos, the mails would reach Lake City and points west of Lake City quickest over route 38150, from Saguache to Lake City. The character of this country is mountainous and the route was necessarily a very difficult one. In order to reach Lake City it was necessary to go north of San Luis Peak, which is 14,000 feet high.

A route on which it is charged that John W. Dorsey drew pay for two quarters when no service was performed is No. 38152, from Ouray to Los Pinos. Now, to get the mails from the East to Ouray, it was necessary to pass to the north of the Uncompahgre Mountains. Remember Fort Garland and Lake City and Ouray and Los Pinos are all connected together, and what I am now stating is necessary in order that you may fully understand this branch of the case. You will see the point in a moment. Now let me illustrate. You must remember that it will appear in evidence that it did not make a bit of difference to the Government, and the Government did not care a farthing by what route the contractor got from one point to another, provided he got there on time and visited all the post-offices on the route. If he could get along easier by making detours and going through defiles instead of over mountains that was his business, and the department cared nothing about it. What it required of him was that he should start promptly from one end and visit every mail office on the line of the route

and get to the other end on schedule time. That is what they required. Now, here is Fort Garland [referring to map]. What I am now talking about is the route that runs around here [indicating] making this detour and coming through this defile and over here to Ouray [indicating]. The trouble was that when they got in here [indicating] they encountered very high and precipitous mountains. When Congress laid that route down they did not know exactly where the defiles and passes were; but they made a route from one point to the other. The contractor was to start from this point [indicating] and go to this point [indicating]. Now, when he gets here [indicating] he finds confronting him an enormous mountain, so precipitous that a man could scarcely climb over it on foot. The department does not care how he gets around so long as he does get to it. Now, what does he do? When he gets up here to Lake City, in order to get over to Ouray, he travels up to Barnum, and goes round the Uncompahgre Mountains. He has to get around these mountains, and so he travels up here to Barnum, and Barnum is made a point on this route. Then he comes around down here [indicating], and comes through a defile, and strikes a road here [indicating], and goes through a defile here, and arrives at Portland, which is a short distance north of Ouray, and he gets down into Ouray by that means. He starts and comes down here [indicating], finds this mountain in the way; comes to Barnum; comes down here [indicating], and gets to Ouray. That is his destination. Mr. Sanderson had this route and was running stages, because the development of the country was such as to even induce a railroad company to build a road right out on that mountain, and if they could afford to build a railroad there, he certainly could afford to run a stage. When he got over here to this point [indicating] he struck a road that leads from Ouray up to Los Pinos. Now, do not forget that Sanderson had the Ouray and Los Pinos route. He had this one running up here [indicating] and coming down this road [indicating] to Ouray. Then he had this route running from Ouray to Los Pinos. Now, when his stage came around and got down to there [indicating] his mail carrier that came from here [indicating] met his coach, and instead of the mail rider riding on down to Ouray, he delivered the pouch to Sanderson's coach and Sanderson on that coach carried it into Ouray. The mail was made up at Ouray, placed in a pouch for Los Pinos, delivered on Sanderson's coach, and carried up there to Portland, and there they had a rider to take that pouch, and it was thrown off the coach and the rider picked it up and carried it to Los Pinos.

The FOREMAN. [Mr. Dickson.] Is that the route on which Colonel Bliss charged double service was performed?

Mr. WILSON. That is it, Mr. Foreman. You have heard a great deal about it. That is the reason I am so particular in explaining it to you. One of the charges that they make against us is that here was a double service being performed and paid for on one route. Now, this route could have been shortened by the Post-Office Department. They could have terminated the route at this point [indicating], or they could have run it up to Ouray and terminated it at that point [indicating].

Mr. MERRICK. Which point do you refer to?

Mr. WILSON. Portland.

Mr. MERRICK. You say "this point" and "that point," and I cannot understand which you mean.

Mr. WILSON. I am talking about the point where the two routes came together. That could have been done, could it not? Of course; and you say it ought to have been done, don't you?

Mr. MERRICK. You say so.

Mr. WILSON. Do you not say so?

Mr. MERRICK. I understand you to say so.

Mr. WILSON. Do I understand that to be one of your points in this case?

Mr. MERRICK. I understand you to say it is.

Mr. WILSON. Ah! I see there is a fast and loose business about this case.

Mr. MERRICK. Not much fast and loose.

Mr. WILSON. There is. My friend is always adroit, always ingenious, always equal to an emergency, and if the point made in the beginning does not suit him at the end, he will make some other that is equally plausible.

Mr. MERRICK. We will stick to Colonel Bliss's argument.

Mr. WILSON. They could have done that, and perhaps they are censuring the Second Assistant Postmaster-General because he did not cut off the Los Pinos route at Portland. If he had done that, what then? They would have had to establish a distributing office at Portland; that would have been the result of it. That is one of the things imputed to us for fraud, for unrighteousness. I have heard a great deal said about things being imputed for righteousness, but this is one of the things imputed to us for unrighteousness and gross wickedness. Now, you understand that, gentlemen, I think.

The portion of this route west of Lake City was impracticable. That is to say, almost impossible to be traversed at any season of the year. By a man on foot, and in winter, the trip could not be made at all. Therefore the route from Garland to Ouray was extended from Lake City to Barnum by way of the northern side of the Uncompahgre Mountains. Now, the route No. 38152, from Ouray to Los Pinos, is only twenty-five miles long. Owing to the topography of the country it necessarily ran for a short distance over the same line of route as that from Lake City via Barnum to Ouray. Sanderson performed the service on both of these routes.

Now, I think, gentlemen, that I have stated enough in connection with this to show to you that, if the facts are as I understand them to be, there is no reasonable ground for imputing fraud to my client. You might just as well say to me that if here is a route running from Washington to the city of Baltimore, and another from Washington to Hagerstown, and the two run over the same road as far as Bladensburg, and one man had both of those routes, that he shall not be paid for one of them any further than from the point where they diverged at Bladensburg. I submit that there is nothing in the law and nothing in justice or good morals that would prevent what happened in that case.

The next is route No. 38156, from Silverton to Parrott City.

Silverton is sixty-nine miles north of Parrott City. It is now reached by the Denver and Rio Grande Railroad, which runs up a gorge in the San Juan Mountains, made by the San Juan River. Silverton was scarcely known in 1877, when the service was advertised for, but like other points in the San Juan country in 1878-'9, developed into an important mining center. The service was originally to be twice a week, at a speed of one and nine-tenths miles an hour. The pay was \$1,488 per year. In 1879 it was increased to four trips a week, and the speed was increased from a fraction over a mile an hour to more than five and one-quarter miles an hour, and the pay was \$16,512.28. In this case it is alleged that John W. Dorsey made a false statement when he

said to carry the mails seven times a week it required three men and ten horses.

Now remember that in 1879 it was increased to four trips a week and the speed was increased from a fraction of a mile an hour to more than five and a quarter miles an hour, and the pay was \$16,512. I have substantially the same route here. [Exhibiting paper to the jury.]

Mr. MERRICK. State what you are going to prove.

Mr. WILSON. I am going to prove that this present Government—and I commend it to you as being an honest administration—has advertised for that service six times a week and let a contract for it. They say it was not needed in 1878 or 1879, and yet they are advertising it now six times a week. Last Saturday they increased it (my friend corrects me) to six times a week.

A JUROR. What route?

Mr. WILSON. Thirteen thousand one hundred and ninety-six is the present number.

Mr. MERRICK. Antelope Springs to Silverton?

Mr. WILSON. Yes, sir.

Mr. MERRICK. That is a different route.

Mr. WILSON. Oh, yes; a very different route. Altogether different. You will see, gentlemen, when we come to the proof, whether it is a different route. I think it will make you smile when they point out the difference.

Now, it must be remembered, gentlemen, that there were in this region of country no supplies of any kind. All the grain and hay required for the animals employed on the route had to be hauled from the terminus of the Denver and Rio Grande Railroad, which, in 1879, the time when this application was made, was Alamosa. To shoe the horses a portable forge had to be carried. Now, in going from one end of the route to the other the three men and ten animals were not to be used simply in carrying the mail, but to care for conveying the supplies. A team was allowed for transporting the forge, and then a superintendent of the route was also provided. The original schedule was twenty-six hours. It was reduced to fifteen hours, and to do this Mr. Dorsey said it would require six men and thirty animals. These six men and thirty animals were not only for the purpose of conveying the mail daily between Parrott City and Silverton, but they were to haul supplies over one hundred and fifty miles from Alamosa to Parrott City and then distribute them along the sixty-nine miles between that point and Silverton. That is what these contractors had to do in order to get the mail into this thriving mining locality, where the people were demanding these mails and where before we get through with the case we will show you that half a dozen stages a day were going in and out through those defiles over this very route carrying in the active enterprising men of this country who had established themselves there in the business of mining. The only way the gentlemen on the other side can get along with this is to say that that kind of men are not entitled to frequent and speedy mails.

It is just as well here as any other place to bring to the attention of the jury the fact that the Government requires the mails to be carried promptly on schedule time on all routes, and for any failure in that regard, fines and deductions were imposed on the contractor. Now if the contractor had had on the route simply men and horses enough to carry the mails, and a man should become sick, or a horse become disabled, it would necessarily result in a detention of the mail and

a loss to the contractor; while if he was prepared with extra men and animals they could be used immediately in the case of such an emergency. It is therefore manifestly unjust to claim that the contractor was entitled to no more men and animals than those barely necessary for actual service. Necessarily the contractor had to maintain a reserve force of both man and beast. We shall show you by the testimony of witnesses who had important mining interests at Silverton, and who are thoroughly familiar with the condition of things there the needs for mail service at that point, this very mail service which was put upon that route. We shall show you by the testimony of witnesses now in this city having business interests there and who have spent a great deal of time there, that that increase and expedition about which so much complaint has been made was indispensable to the people who had flocked in there after mineral discoveries were made. It will be shown to you that a place which at the time this route was let was comparatively insignificant came to be one of great prominence; that a large number of stages were necessary to carry the people who went to and from this point. These people were the active, energetic, enterprising men, who had gone there for the purpose of developing the great mineral resources of that section. I know you will inquire among yourselves whether there is any good reason that can be given why these men thus engaged should not have ample mail service for the purpose of communicating with their friends whom they had left behind them, and for the purpose of successfully transacting the business which had carried them there.

Route No. 41119, Toquerville to Adairville, is at the southern end of the Great Salt Lake Valley in Utah. The Southern Utah Railroad is being built from Salt Lake City down this valley. It is a rich and fertile country, and within the last few years has been rapidly settled by Mormons. From the terminus of the Southern Utah Railroad there are two lines of mail service to supply the many settlements and towns in this valley. Toquerville was supplied with six-times-a-week service from New Harmony, a point on the route leading from York to Pioche. The route from Toquerville to Adairville is a hundred and thirty-two miles long. The route was originally let at one trip a week, at a speed of two miles an hour, and the compensation was to be \$1,168 a year. It is a well known fact that the Mormon leaders have been pushing their settlements south with great rapidity, and that the region we are speaking of began to be settled in 1878-'79. Kanab was the terminus of the route beginning at Richfield, over which postal service was carried. Virgin City and Windsor were two places between Kanab and Toquerville, and Puhreah was a considerable settlement between Kanab and Adairville. Service on the Toquerville route was made six times a week, and the speed increased to four miles an hour. This increase and expedition was demanded, as the records of the Post-Office Department will show, by the Delegate in Congress, and by numerous petitions of numerous citizens residing along the route. The cost of service on this route compared with that on any other routes in Utah, was not excessive, as the records will show; and I may here say that the mail service on the routes from the terminus of the Southern Utah Railroad south, as let to begin July 1, next, is continued with the same frequency and speed as that which was performed during the present contract term.

In connection with that you will remember that Colonel Bliss spoke of some effort on the part of a man by the name of Johnson to get this service diminished. When you come to see the actual facts

of record in that case, so far as this Mr. Johnson is concerned, you will find that there was a subcontractor there who wanted to get rid of performing this service, and after the department had ordered the service then he began his efforts to get that service reduced. Mr. Bliss, in his statement of the facts to you, has undertaken to say that General Brady did something wrong because he did not listen to the overtures and the efforts of the subcontractor to get the service reduced, but did listen to the petitions of the people to have the service maintained.

Route No. 34149, from Kearney to Kent, Nebraska, is one to which I want to call your special attention. This is the one with which Senator Saunders is to be called as a witness. Mr. Bliss said he was going to call him as a witness to find out whether Senator Saunders had written, forged, and altered or changed petitions. To that extent he is going to examine him as a witness, as to those words, "schedule thirteen hours." Well, he will be examined as a witness to a much more considerable extent than that. Now, gentlemen, I say to you that the testimony will show that this route No. 34149 runs through one of the richest and most thickly settled portions of Nebraska. Kearney is a point on the Union Pacific Railroad where a number of railroad lines converge. Now, this route runs from Kearney up north in the State of Nebraska, reaching various towns and running in a zigzag direction to get at them, and stopping at Kent. It was let for once a week trips, and a speed of two miles an hour, and cost \$862 a year. There were two trips added on seventy-four miles of this route, and the schedule was expedited from sixty to forty-seven hours over the whole line. Now, I know that immediately the thought occurs to you why it was if General Brady and the contractors were conspiring to get money out of the Treasury on account of this route they did not increase the trips over the whole length of it up to Kent. Why did they increase the trips only up to a certain point and there stop? They would have got a great deal more money by going up to Kent, but they stopped at this point. Now, this added to the cost of the service \$3,322 a year. The complaint is that this was done on a petition in which an alteration had been made by adding the words "schedule thirteen hours." It is assumed, and indeed asserted, that Mr. Brady should have noticed that these words had been inserted; that is to say, a man sitting at the contract desk with all this mass of business, who is, in fact, a sort of distributing officer of all these divisions, about all these matters ought to have known that those words "schedule thirteen hours" were inserted after the petition was signed, and he ought to have scrutinized this thing and ascertained that such was the fact. It is assumed, and indeed asserted, that these words were inserted in the petition after it had been signed, and because the petition was filed in the condition that it was, and acted upon by Mr. Brady, it is assumed, and even asserted, that he must have been cognizant not only of the insertion of these words but also that he knew, or should have known, that they were inserted after the paper was signed. The unreasonableness of this becomes apparent when you consider for a moment the extent of the business which Mr. Brady was called upon to perform, and the further fact that in his office were divisions to which all such papers were referred, and therefore the utter impossibility for him under the circumstances to scrutinize every paper that was brought into this great contract office. Why should he set on foot an investigation in regard to that matter? The petition was referred to the Post-Office-Department by a Senator of the United States.

The COURT. If I understand the scheme of this prosecution, it is of a *different* kind from that you are looking at now. The scheme of this

against Brady, as well as the others, is that these false papers agreed upon in advance, and were prepared in this way for use of deceiving some one else than themselves; that they did not about being deceived or misled themselves, because it was a small matter; but it was for the purpose of placing on file in the court something that would deceive somebody else. If they were in the conspiracy there was no need to use means of deception on themselves.

ATTEN. Mr. Wilson is following Mr. Bliss.

WILSON. I was going to remark, if your honor please, that unless I misunderstood Colonel Bliss, and I do not think I did—I have time to read what he said, but I listened to it attentively—he is laying upon this jury that the fact that this paper passed through the State and was acted upon, was an evidence that General Brady was engaged in a conspiracy to defraud this Government.

REPENTER. That is it, certainly.

WILSON. My friend says that is it, certainly. Therefore I say in presenting to the jury the fact that that paper was transmitted to the Postmaster-General—I do not exactly remember which—Senator of the United States, who indorsed that petition and asked for service because it was in his own State, and he knew the character of the country and the needs of the people. I am presenting this in answer or as a suggestion to the jury, so that when the jury hear the testimony they will have such an understanding as that they will be able to make a proper application of the testimony. Your honor and I do not disagree about the scheme of the case; and if I do from what is proper, I shall be glad to be set right.

COURT. I acknowledge myself that I did not comprehend your position on the matter. I misunderstood you. You were replying to Mr. Repenter.

WILSON. Exactly. That is just what I am doing. I am endeavoring nearly as I can carry it in my mind to follow exactly in his position. I think thus far that I have not materially departed from it.

COURT. No. I think not. I beg your pardon.

WILSON. Not at all, your honor.

ERRICK. It is now 3 o'clock.

COURT. Yes; the hour for adjournment has come. [To Mr. Wilson.] May I inquire what will probably be the length of your opening? Will you occupy all day to-morrow?

WILSON. No, your honor. I am very much disappointed with myself. I had not the slightest idea that I would occupy as much time as I have. I expected to have been through long before this, but that I have not gotten through with my manuscript. I think I shall get through with the balance of it in the course of an hour in the afternoon.

ERRICK. Will some of the counsel who are associated with Mr. Wilson follow him?

ATTEN. Yes.

ERRICK. We want to know when to bring our witnesses here. At what hour of the counsel will open?

COURT. Let me understand what you claim in relation to the conspiracy. I understand that Mr. Wilson is opening on the general character of the conspiracy.

ATTEN. Mr. Wilson is opening, your honor, for the two public prosecutors who are charged with this offense in this indictment. They are assisted by Mr. Wilson, Mr. Chandler, and myself. It is my un-

derstanding that some of the other gentlemen who represent defendants not represented by us desire to say something in regard to special matters which relate to their clients, but not to cover the ground which Mr. Wilson will have covered when he shall have finished.

The COURT. You do not propose to follow Mr. Wilson?

Mr. TOTTEN. Oh, no; I am not going to say anything, nor is my associate. Mr. Wilson closes the case so far as Brady and Turner are concerned.

The COURT. And the opening for the others will be upon special matters in which their defense differs from the defense of the officers.

Mr. INGERSOLL. The court will see how it naturally divides itself. Suppose Mr. Brady takes the ground that he acted in good faith, but that he was misled by the petitions, or by the letters, or by the affidavits. The court can see instantly that the defense of Mr. Brady may take one ground and the defense of the others another ground. The court can see that we may not run together at all, and may be perfectly antagonistic. We will not go over the same ground that Mr. Wilson has gone over with regard to the mail service and the needs and demands of the country, and all that sort of thing, further than to point out the special points involved with regard to our clients. We will agree upon that to-night among ourselves. We want to be as brief as we can, and not take up any more time than is absolutely necessary.

Mr. TOTTEN. Your honor may rely upon it that the defense will not talk simply for the sake of talking. We will say nothing except what we think it is our duty to say. I can speak for my associates, and for the other gentlemen I feel sure. We do not intend to talk for any purpose, except for the purpose of defending our clients properly, as we are in duty bound.

The COURT. I am very much pleased with the character of the opening so far, because it has certainly tended to enlighten my mind as to the nature of the prosecution and of the defense. There is no doubt about that.

Mr. MERRICK. Can you tell me whether we will get to our testimony to-morrow?

Mr. TOTTEN. I hardly think so.

Mr. MERRICK. You think we will not get to the testimony to-morrow?

Mr. TOTTEN. I do not know; but I do not think we will.

The COURT. When the gentlemen talk so well and so easily the time runs away very rapidly.

Mr. WILSON. The court is anticipating what is coming when my friend goes on. If you will allow me a suggestion in that connection, I will say that I think I have been doing a great deal more talking than I ought to do were it not that I believe that a full opening of this case, giving all the details on either side, will be of great service in aiding the jury to comprehend the testimony. When we get into the testimony it will be exceedingly complicated. There will be bushels of papers here, I have no doubt, and all these routes are to be gone through, and we cannot tell how far it is going to extend. So I think the opening will be of great service to the jury.

The COURT. I know it will be.

Mr. WILSON. I will not suggest that anything I may say or may have said will be of any service to them, but I think they will be well prepared to understand the testimony in the case if there is a thorough

opening. I think it will be to the advantage of the Government as well as to us.

Mr. MERRICK. We certainly want a full opening from the other side. The Government certainly desires that.

The COURT. The Government had a very full opening for themselves.

Mr. MERRICK. Yes; and we desire a full opening from them for their own benefit, as well as for ours. Our object is the truth, and that the jury may comprehend the whole matter.

At this point (3 o'clock and 15 minutes p. m.) the court adjourned until to-morrow morning at 10 o'clock.

WEDNESDAY, JUNE 7, 1882.

The court met at 10 o'clock and 5 minutes.

Counsel for the defendants being present.

The COURT. [At 10.08 a. m.] You may proceed, Mr. Wilson.

Mr. WILSON. Shall I not wait until the counsel for the Government come in?

The COURT. No. They ought to be here now.

JEREMIAH M. WILSON, Esq.,

then resumed his address to the jury on the part of the defendants, Thomas J. Brady and William H. Turner, as follows:

May it please your honor, and gentlemen of the jury: I congratulate you all that you still live after the inflictions to which you have been subjected. On yesterday, in speaking of the route from Saint Charles to Greenhorn, I omitted to refer to one of the points that I understood Colonel Bliss to make in his opening statement. You will therefore indulge me for a moment or two while I refer to it. You will remember that I called your attention to the fact that Saint Charles lay off this line of road a short distance, and that the place marked as Greenhorn on the map is a mere water-tank, where nobody lives, and where there is no post-office, and nobody to take charge of the mail. But this road being in progress down here [referring to map and indicating] when this advertisement was made for the letting of this route, instead of advertising it from Pueblo down to Greenhorn in these mountains [indicating], as the route had formerly been, they advertised from the point known as Saint Charles. You will remember that Colonel Bliss showed you a little map that they had had made on a small piece of paper, showing this line running down here along the side of the railroad, apparently in proximity to it—in fact it is in proximity to the railroad—and then running off down here to Greenhorn. Now, the point that he made in reference to that was this, as I remember it, and I shall attempt to state everything that he claimed as accurately as I can carry matters of that kind in my mind, for I have not had time to read any portion of his remarks; his point was that this route was advertised for a distance of thirty-five miles, whereas in point of fact it was only twenty-three miles. I may not give you the precise figures, but I will be very close to them you will find. Then he said, you will remember, that they pretended to increase the distance from Saint Charles up to Pueblo, which was about twelve miles, and that would make the entire route, after that extension, about the advertised distance, to wit, thirty-five

miles. You will remember, he said, in substance, that one of the iniquities of this case was that they extended that route for twelve miles, and then paid us for twelve miles, when the railroad was running right over it, or something like that. Now, gentlemen, the facts about that are, as you will discover when you come to hear the testimony in this case, that they did just as I have stated, advertised from Saint Charles to Greenhorn; that they did advertise that as being thirty-five miles, and that they did subsequently discover it was only twenty-three miles; but there being no post-office at this point down here [indicating] opposite Saint Charles on the railroad which is marked here [indicating] as Greenhorn, and there being nobody to take the mails, and Saint Charles being three or four miles off from that railroad, there was but one thing they could do; they had to extend that route up to Pueblo. That was a necessity, because there was no mode of getting the mail to the head of that route, to wit, Saint Charles. Now they added on to the twelve miles and they added a corresponding compensation to the pay of the contractor. Well, that looks to you a little strange, gentlemen; you would say that was a queer thing to do; that when they had advertised this route for a distance of thirty-five miles, and when it was in fact only twenty-three miles; and when they added enough to it to make it thirty-five miles, that they should then add to the pay of the contractor. Now, that is very simple, gentlemen, although it may seem to you to be very strange. The proof in this case will show you why this was done. I have right here on my table, but will not occupy your time in reading them, the instructions that are given to bidders by the Post-Office Department, instructions that have prevailed for years and years before General Brady ever knew anything about the Post-Office Department. According to the instructions, they advertised between one point and another point. They say to the bidder in writing; they say to him in print; they send it out to every bidder and give him distinct notice that he is to carry the mail between those two points; and they say to him, "If the distance is greater you must take the risk. If we advertise it as twenty-three miles and it turns out to be thirty-five miles you have got to carry it the thirty-five miles. If we advertise it for less than it is, or for more than it is no matter. You have the advantage if it turns out to be less. We pay you for carrying it between those points. If we add anything to it we pay you for that." Now, gentlemen, that has been the practice. There has been no variation from it, for, I might almost say, time out of mind. I think I can say to you that certainly for twenty-five years that has been the uniform rule in the Post-Office Department. If it were not for that rule there would be everlasting, unending confusion and controversy in that department. So they established that as a rule. If they advertise the distance shorter than it is at any rate they have given the terminal points. They say, "We advertise this route for one hundred miles. If it turns out to be one hundred and fifty miles you must carry the mail, no matter though it is one hundred and fifty. If it turns out to be only seventy-five miles you have got the benefit of it; and whenever we add anything to these terminal points and increase the length of the route you have the benefit of it, because we add that much to your contract and you are paid for it correspondingly." Now, we make this explanation to you, gentlemen of the jury, which will be verified I am very sure by the testimony of this case, and then you will see how utterly baseless is the charge that has been made against my client on account of that feature of the case.

Now, I want to call your attention to one other thing. I spoke to you yesterday of the magnitude of the business of this office. Since that time a little calculation has been made. I gave you the total number of routes, steamboat, railroad, and star, aggregating eleven thousand one hundred and twelve. There are three hundred and sixty-five days in the year, fifty-two of them are Sundays and six of them are holidays. There are three hundred and seven working days. The office hours of the Post-Office Department are about seven a day. That will give two thousand one hundred and forty-nine working hours in the course of a year. If you will divide eleven thousand one hundred and twelve by two thousand one hundred and forty-nine, you will find that it makes an average of five contracts entered into an hour during the whole year. Yet in the face of that we are told that General Brady is, in addition to all this matter of entering into contracts, and all the enormous details of that office, to know all the minutiae and particulars of this enormous business.

Now I resume, gentlemen. I was talking to you yesterday at the adjournment with regard to the question whether or not General Brady had been derelict in his duty with reference to this route from Kearney to Kent. I had called your attention to the fact that a Senator of the United States had sent in a petition to have this route expedited, and to increase the service upon it, and I had called your attention to the question, as to whether or not it was reasonable to say that when a paper of that kind was thus indorsed by a Senator familiar with the country through which this route passed, it was a duty of General Brady's to go into the minutiae and see whether "schedule thirteen hours" had been written on it by somebody after these various parties had signed that petition. You will remember, gentlemen of the jury, that when Colonel Bliss had spoken to you about this very identical case, he made reflections upon another of my clients, Mr. Turner; that there must be something wrong about Turner in connection with this thing; why did not Turner see that this thing had been done? And when I mildly suggested to him that that paper was not in Mr. Turner's division, that Mr. Turner never could, by any possibility, have seen it, he said, "Oh, I believe that is so; but there was some other facile person there who helped General Brady in this business." Don't you remember it? Who was that other person? He did not have—I will not use the word—he did not excuse Mr. Turner, but he undertook to raise an inference from that. Who was this other man? Why, Mr. Brewer, a gentleman against whom the breath of slander has never been raised. Why is not he in the indictment? If for these mishaps men are to be indicted, I cannot understand how Brewer happened to be omitted in this case. If it is proper to put Turner in for such a mishap, it would be equally proper to put in Mr. Brewer.

[At this point Mr. Merrick, of counsel for the Government, entered.]

Now, the route from Kearney to Kent, this same route with reference to which I am speaking, was expedited. Who expedited that? Have they not made you believe General Brady did that? Have they not told you that General Brady did that? Certainly. And if I were not standing before you to-day you never would know differently until the records and files of this case were brought before you. The truth is that General Brady did not do any such thing. General Brady was not there. Another man, who is not named in this indictment, was acting as Second Assistant Postmaster-General at that time, and made that order. Yet they are holding General Brady responsible for it.

Now, right here, gentlemen, I want to bring your minds to a matter which I think you will find worthy of your consideration. I have talked to you about the mode in which these lettings were made. I have brought to your attention the fact that these routes were let to the lowest bidder. I have also brought to your attention the fact that they advertised according to the best lights that they had, and that they are often compelled to increase or decrease the service. What I want to get your mind to now, is simply this: How do you know or how does the department know, or how can anybody know, that if they had advertised for this service for the exact number of trips and the exact rate of speed which they reached after the increase and the expedition, that anybody would have bid for the service lower than what the Government got it for? It is a mere assumption that the Government would have got it any cheaper than that; the purest assumption. It is not within human possibility to know whether Jones or Smith or Brown or anybody else would have bid for this service, if they had advertised for the exact number of trips and the exact speed, at any less sum than the Government got that service for. And yet, upon these assumptions, you are asked to find my client guilty of an infamous crime.

Now, gentlemen, I cannot go through all these routes in all their details; I am going to leave something for the evidence. I am compelled to do that. But what I have said to you with reference to those routes as to which I have spoken, you will find to be true, substantially, with reference to the whole of them; and this the records and files of the Post-Office Department will show.

[Mr. Ker, of counsel for the Government, here entered.]

Now, something has been said to you with reference to failures to perform the service. Of course they were failures to perform the service. But has this prosecution told you or have you yet learned that whenever a contractor failed to put the service upon the routes as required by the law and in the time required by the law, and failed to perform his trips as the law required, failed to make his schedule time as the law required, that for every such failure the department imposes upon him a fine or makes a deduction from his pay; and the rate of the fine and the rate of the deduction is definitely fixed by the law and the practice of the department. It was not created under the administration of General Brady, but prevailed for many, many years. The evidence in this case will show you, gentlemen of the jury, that invariably where there was a failure upon the part of the contractor, my client, who is alleged to have been in conspiracy with these contractors, imposed upon each one, with a rigid and an iron hand, the fines and deductions for that failure to perform the service. And when the testimony shows you this, as it will show it to you, you will begin to inquire whether or not a man who had conspired to get money out of the Government by fraud would thus fine his coconspirators, and make deductions from the pay of his coconspirators, a part of the money which they were to receive being intended for his own pocket.

Now, since comparisons have been entered into in this case, I wish to make some myself. I do not know as a matter of course how far these comparisons are to figure in the case. At the time Colonel Bliss began making them for the purpose of affecting the case, I made a suggestion to the court, as you will remember, in regard to which his honor informed me that he could not tell whether the testimony was going to be competent, and therefore it was too soon to interrupt Colonel Bliss. I bow always to the rulings of the court. But, inasmuch as comparisons have anything to do with the case it becomes necessary that I

should meet them in my opening statement to you on behalf of my client. I desire to refer you to a statute, and I desire to bring the attention of the court especially to the same statute, upon which Colonel Bliss based a long argument in regard to the productiveness of the service—it being the duty of the Postmaster-General, or, if you will have it so, the Second Assistant Postmaster-General, in making contracts for service, in regulating or prescribing the number of trips, and the expedition or the schedule of the service, to have regard for productiveness. This statute, may it please your honor, and gentlemen of the jury, reads thus :

The Postmaster-General shall provide for carrying the mail on all post-roads established by law as often as he, having due regard to productiveness and other circumstances, may think proper.

As often as he, having due regard to productiveness, *and other circumstances*, may think proper. Well, gentlemen of the jury, you may remember how often and with what earnestness Colonel Bliss dwelt upon that word “productiveness,” and how delicately and tenderly he passed over the other phrase “and other circumstances.” You will remember that having presented that statute to you he then proceeded to call your attention to the cost of these routes, and then to present to you the revenues derived from these routes. To that subject I want to invite your attention. I want to call the attention of the court to the law, the legislative history of that section ; and I want to draw some comparisons after I have presented that legislative history and see whether out of it this prosecution can gain anything before this jury.

I wish to remark, lest I may forget it, that the matter of the receipts of the offices is no criterion whatever as to the value of the route. For instance, here is a route one hundred miles long. The offices only show the mail that goes out of those offices. They do not show the mail that goes through, what is called the through mail. So that nothing could be more deceptive than such figures as these presented to the jury. Take the Bismarck and Tongue River route. There was Saint Paul and Minneapolis and Bismarck and all that region of country down through there. Here was a route of two hundred and fifty miles across that country, not an intermediate post-office or place of delivery—or suppose there had been an intermediate post-office half way across this route. Now the mail goes through, and the few letters that would stop at this one post-office, or the few letters that would go out from this one post-office—for it is all they would have out there in the woods—would show an enormous discrepancy between the cost of the route and the revenues or profit from it. And yet what would be more deceptive to a jury than to present a state of facts like that ? Why, gentlemen, that thing has been so much discussed, and is so well understood amongst those who are familiar with post-office matters, that I did not suppose that any comparison of that kind would be attempted to introduce in this case. But the experts who will be here, in all probability, in regard to this matter, will tell you just what I have told you, that that is not the criterion ; that it is an utter fallacy ; that it is a bald deception when it is resorted to for the purpose of indicating the importance and the usefulness of one of these star routes. Now, I have read to you that section, and I have called your attention to what Colonel Bliss said in regard to it, and the argument he made upon it.

Now, let me go into the legislation on this subject, to show you that the Government does not regard productiveness as the criterion in reference to these matters, but that the potential words in that statute, the

great governing words in that statute, are "the other circumstances." In 1792 we find the first act bearing upon this question. I read from the first volume of the Statutes at Large, section 3, page 234 :

That there shall be established at the seat of Government of the United States a general post-office, and there shall be one Postmaster-General who shall have authority to appoint an assistant, and deputy postmasters, at all places where such shall be found necessary, and he shall provide for carrying the mails of the United States, by stage, carriages or horses, as he may judge most expedient; and as often as he, having regard to the productiveness thereof, as well as other circumstances—

There you see where it began—

shall think proper.

This statute that I have referred to that is in the revision was enacted in 1792.

And defray the expense thereof, with all other expenses arising on the collection and management of the revenues of the Post Office.

Now, I turn to the same statutes at page 512, section 8. You will see that Congress just in the beginning of our Government was engaged in establishing, setting on foot this vast postal system, or that which has now come to be this vast postal system of the Government :

That it shall be the duty of the Postmaster-General to report annually to Congress every post-road which shall not, after the second year from its establishment, have produced one-third the expense of carrying the mail on the same.

Now, keep these along gentlemen, because they constitute the history of this thing. After two years of trial, if any post-road has not paid one-third of the expense of carrying the mail on the same, it shall be reported by the Postmaster-General to Congress, in order that Congress might determine, of course, whether such a route would be continued in existence notwithstanding its non-productiveness, because of "the other circumstances."

Now, the next statute on that subject will be found in the 4th Statutes at Large, page 100, section 2. It was passed in 1825 :

That all post-roads, which hereafter within the term of three successive years fail to yield one-fourth of the expense incident to its establishment shall be discontinued by the Postmaster-General, unless in cases where it may be necessary as a connection or continuance of a route or routes: *Provided also*, That this section shall not be so construed as to deprive the seat of justice in each county of one mail going to and from said town.

There was a statute which I have not read to you which required the Postmaster-General to supply every county town, every county courthouse town, I believe they call it, with a mail. Now, this statute passed in 1825, you will observe, required the Postmaster-General to discontinue a route when after a trial of three successive years the route had failed to yield one fourth of the expense incident to its establishment.

Now, the next statute that was passed was in 1845, and it will be found in the 5th Statutes at Large, page 739, section 22 :

And be it further enacted, That in case the amount of postage collected from the rates of postage prescribed by this act—

They had begun to reduce postage then—

with the annual appropriation from the Treasury of \$750,000 herein granted, shall prove insufficient to defray the expense of the mail service throughout the United States to an extent equal to what is now enjoyed by the public, and also the expense of extending and enlarging the same in due proportion with the increase and expansion of the population—

You will please to observe those words, gentlemen, the increase and expansion of the population. That is to say, having regard to the

fact that the people of this country were going out into the uninhabited regions of the country, it being the intention of Congress to supply those people with mails—

shall prove insufficient to defray the expense of the mail service throughout the United States to an extent equal to what is now enjoyed by the public, and also the expense of extending and enlarging the same in due proportion with the increase and expansion of the population, particularly in the new States and Territories, the deficiency that may so arise shall be paid out of any moneys in the Treasury not otherwise appropriated.

Now, when they began to reduce the postage you will see that Congress had an eye to the fact that the possibility might be that the revenues from the Post-Office Department by reason of this reduction in the postage might cut off the people from these mail facilities, and hence Congress was careful to provide that they should not be deprived of these postal facilities, but on the contrary that they should be maintained, and the expense thereof and the deficiency arising out of that should be paid out of any moneys in the Treasury not otherwise appropriated.

Now, gentlemen of the jury, there is another section of statute to be found in the ninth volume of the Statutes at Large, page 590, section 7. This act was passed on the 3d of March, 1851. Before I read it I want to bring to your attention that which you will take cognizance of in the determination of this case as a matter of public history, and public history of which the court will take cognizance. The war with Mexico occurred. Pending that war the Government established, from New Orleans to the city of Washington, a pony express, or a fast express, for carrying the mail, the object being to get to the seat of Government in the most expeditious way possible the very latest news from the seat of war. A night express, if I remember correctly, was established between the city of Washington and the city of New York. Private enterprise came in competition with the Government in that matter and the country came to know something about the value of expedition in the way of carrying information from one section of the country to the other. The treaty which terminated the war with Mexico gave to this Government that vast region of country lying along the Pacific coast, and extending far towards the East, which was then comparatively uninhabited and unknown. Immediately after that came the discovery of gold in California—and this has particular significance now, gentlemen, with reference to what I am hereafter to say. You know you have often heard the word “forty-niners” of California. In 1848 and 1849, the people flocked there in droves, went into the mines of this new El Dorado and began to dig out the wealth of those mines and give them to the country and the world. Now, the whole policy of the Government on this subject changed, as I will show you. In 1861 Congress passed this act, which I am about to read, and it is as follows:

No post-office now in existence shall be discontinued, nor shall the mail service on any mail route in any of the States or Territories be discontinued or diminish in consequence of any diminution of the revenues that may result from this act, and it shall be the duty of the Postmaster-General to establish new post-offices and places of mail service on any new mail routes established, or that may hereafter be established in the same manner as though this act had not passed.

It was an act cutting down the postage that was to be paid for the carriage of mail, letters, &c.

Now, gentlemen, there have two theories prevailed in this country, two ideas, with reference to this postal service. There is one class of men who have thought that this particular part of the Government

ought to pay its own way. They say it ought to be conducted on business principles; that this department of all the departments of this Government ought to pay its own expenses; that this department which of all other departments gets the closest to every class of people, from the highest to the very lowest, should be conducted on what they call business principles; that is, ought to pay its own way. Nobody thinks of course that there is anything wrong in the War Department not paying its own way, or the Treasury Department not paying its own way, or the Navy Department not paying its own way, or the Interior Department not paying its own way, or the Department of Justice not paying its own way. But when it comes to this particular department, which goes right into the homes and the counting-houses of all this country, it must pay its own way. Now that is their theory. I am not saying whether it is right, or whether it is wrong.

Then there is another class of people who think that this Post-Office Department ought to be made the means of conveying intelligence to the people, making the people more intelligent to-day than they were yesterday, and that it ought to be made the means of assisting in developing the industries and wealth of this country; that it ought to be a hand maid to enterprise, and that whether it pays or not the people ought to have it, and if it does not pay its way, then the deficiency ought to be supplied out of the common fund, but that the facilities that the people need they should have, even though the revenues of the department do not pay the expenses of those facilities.

Now these are the two conflicting theories in regard to this thing. You can say so far as it is proper for you to say, you will think about it at all events in the determination of this case, and you will have to think about it in the determination of this case for the reason that Colonel Bliss has presented to you with a great deal of satisfaction to himself the fact that some of these routes do not yield revenue enough to pay the expense of running them. Now, let us see a little, gentlemen, about that, because right here comes in the comparison that I am about to make. We having acquired Mexico, and these gold discoveries having been made, and these citizens over here having crossed the Rocky Mountains and gone to the Pacific coast, what does Congress do? It goes to work and establishes a mail route. As nearly as I can recollect, the terminal points commenced up at Omaha, or somewhere up there just about where the Union Pacific Railroad begins now. Then they took another point further down the river, I think it was Leavenworth, just where another railroad was provided to go out there. Then they took another point down about Kansas City or Saint Joe, and they had then three routes conveyed up to Kearney, one of the points about which we have been talking in this case, and then they sent that route for a thousand miles across a desert on which grew no trees—a little buffalo grass, perhaps, and a few sage-brushes where a jack rabbit could not live, by way of Denver and Salt Lake over these mountains to Sacramento and San Francisco—traversing this vast expanse that was uninhabited except by Indians and buffalos, between the Missouri River and San Francisco. This vast region of country where there was a mountain barrier, that many people in those days thought to be the dividing line between two great nations. This Government having acquired that territory, thought that there were other circumstances that were to be considered beyond the mere matter of revenue derived from the carriage of the mails. There was that vast, that important circumstance of uniting the Pacific coast on the west, with the Atlantic and its citizens on the east. And

there was the other circumstance still that this untold wealth lay hidden in the earth in California. Now what did they do? They established this postal route, and the Postmaster-General put the service upon it. And what happened, gentlemen? The carriage of that mail, as the records of the Post-Office Department show, cost \$600,000. How much money do you suppose the Government got out of it? The records of the Post-Office Department show that for that expenditure of \$600,000 the Government got \$27,000 in return.

Mr. INGERSOLL. A year?

Mr. WILSON. A year. Oh, what a blissful thing that would have been, if it could have been charged up to my client, Thomas J. Brady. But that was not all, gentlemen, the Government was not satisfied with that. But it established another route, a southern route, commencing at Memphis, I believe, at one point, and Saint Louis on the other, converging together at a point below, and then they went by Forts Worth and Yuma to San Diego, where the Southern Pacific and the Texas Pacific railroads have been built. The very ground that these railroads are traversing to-day was the ground over which the Government established this postal route. And what did it cost? Was there anybody down there between those unimportant points that wanted mail? Why, there was nobody in that country, gentlemen, excepting Indians. A great deal of it was through mountain fastnesses, where nobody lived, and over deserts and arid plains, where in the summer season the thermometer goes to 125. They put the service on that route, and what did it cost? A little over \$600,000, I think. How much revenue did the Government get from that? Not \$2,000, gentlemen. What was the Government after; was it after revenue from these routes; was it for the purpose of getting money out of these routes? No, gentlemen; it was not the productiveness that the Government had in view. It was "the other circumstances."

Gentlemen, if the court shall finally come to the conclusion that these kinds of comparison are proper to be gone into in this case, I promise to show you by the records and files of the department that if you go upon the theory of productiveness, of business principle, of making a thing pay its way, you will cut off fully three-fourths of all the mail service of this country, and you will wipe out of existence all that mail service that lies west of the Mississippi and Missouri rivers. You will have none of it left.

Now, gentlemen, if it was right to do these things that I have been speaking of as to California, I know you will begin to inquire in your own mind why it is not right to do the same thing for Montana, and Dakota, and Utah, and Colorado, and New Mexico, and Arizona, the wealth of whose mines has warped into comparative insignificance the wealth of the mines of California. Productiveness indeed! That is the great consideration repeated to you over and over. Why, gentlemen, you can see now, it seems to me, that the productiveness is not the factor but it is the "other circumstances" that govern.

Now, if we are to have these comparisons, gentlemen of the jury, then we will institute another comparison. I would like to refer you to the letter-carrier system that has come into existence within the last few years that is so familiar all over this country, and which this Government would not dare in the face of the people now to attempt to dispense with. Is it productive? Yes. But not of money. It is productive of celerity, it is productive of speed, it is productive of facility to the people. It is one of the great business conveniences of this time. And it is because of these things, it is these "other circumstances," out-

side of productiveness and wholly regardless of productiveness, that induces the Government to furnish to the people this letter-carrier system; and we are paying to-day out of the public Treasury hundreds upon hundreds of thousands of dollars annually for the purpose of keeping up this letter-carrier system which yields not a single farthing of revenue.

I thought Colonel Bliss took a great deal of satisfaction in informing this jury that he was a Yankee. Productiveness may be his Yankee idea of conducting the mail service of this country; but there are broader minded people who can see in speed and frequent mails something in value far exceeding any income in the shape of money; and, gentlemen, you will take notice, as a matter of current history, that within but a little while the proposition was made to extend this carrier system, because it would be of infinite advantage to the country. Not a mere advantage to the man in New York, for example, where the carrier comes around three or four or five times a day and gathers up his mail, and two or three or four times a day and puts it into his counting room. It is not to his simple advantage alone, but it is to the advantage of all the people scattered over this country with whom that man has any correspondence. It has been seriously proposed to greatly extend this carrier system, not because of any productiveness, but because of these "other circumstances."

Mr. MERRICK. If your honor please, I dislike very much to disturb an opening which goes along so pleasantly, but my duty constrains me to suggest to the counsel that the opening is not an argument. It is a statement of what he proposes to prove.

The COURT. I was not attending to the remarks the counsel was making, and I shall have to trust to him.

Mr. WILSON. Your honor, I will state that if I am digressing or trespassing upon any rule, I want to be put exactly right. I do not intend to do anything wrong here, if I know it.

The COURT. Judge Wilson knows his duty as well as the court does, and I trust the point to his own sense of propriety.

Mr. MERRICK. I appreciate my brother's knowledge of his duty as highly as your honor, and fully indorse the statement that he knows it thoroughly, but the temptations of interested zeal sometimes lead one to pass beyond the bounds of propriety.

The COURT. Well, a statement sometimes necessarily involves—

Mr. MERRICK. [Interposing.] I have only spoken when I deemed it absolutely necessary, as your honor indicated yesterday that I had not spoken when I ought.

The COURT. So far as the statement tends to meet the opening statement on the part of the Government, the counsel has a right to show in what way the evidence he expects to produce on the part of the defense will overthrow the statement made by the counsel opening for the Government.

Mr. MERRICK. I think if your honor had heard the argument you would have been satisfied as to the correctness of the point I make.

Mr. TOTTEN. Mr. Wilson certainly has not gone beyond the limits covered by Mr. Bliss in this matter, because Mr. Bliss took the largest liberty in the way of arguing, and in denouncing the defendants as rascals, and all that sort of thing. Now Mr. Wilson's statement to the jury has so far, in my judgment, been entirely within the rule. I think the other gentleman who preceded him was very rash and went a great deal beyond the limits. If your honor desires to see a specimen of it I will read it to you.

The COURT. I do not desire it.

Mr. MERRICK. Mr. Bliss was interrupted by Mr. Wilson repeatedly, and the matter was called to your honor's attention repeatedly, and, in my opinion, differing from Mr. Totten, Mr. Bliss did not pass the limits in any particular.

The COURT. I cannot speak of what I have not heard.

Mr. MERRICK. I am disposed not to enforce the rules, as your honor saw yesterday, and to allow the fullest latitude.

The COURT. But I cannot allow it.

Mr. TOTTEN. The court's perceptions are better than ours.

Mr. MERRICK. The court's perceptions are better, generally. The gentlemen on the other side seem to exercise the discretion of an appellate tribunal, both inside and out of court.

Mr. TOTTEN. That remark lacks the merit of originality.

Mr. MERRICK. It has the better merit of entire truth.

The COURT. Proceed now, Judge Wilson. This matter is disposed of.

Mr. WILSON. Your honor, I am very thankful for this little rest, and I have no doubt the jury feel the same way about it.

Gentlemen of the jury, I know you will do me the justice to say that when I began to speak about these things with reference to which this interruption occurred that I said to you that I was meeting comparison with comparison; that I did not know, as the court had not thought it was the proper time to give me the information, whether this would be competent evidence before you or not, but, as the counsel for the Government in his opening statement had indulged in these comparisons, I felt it my duty to present to you that which it seemed to me is a complete answer to his comparison in as far as any comparison that he made could have any effect to throw any shadow upon the conduct of my client, and I had proceeded to say to you that there were some matters of history which it would be proper for you to consider and which we will consider in this case.

I want to call your attention right now to another comparison: You remember that only a very short time ago the Government negotiated with a railroad company to carry the mails on exceedingly fast trains from New York by way of Washington to New Orleans, from New York to Saint Louis, from New York to Chicago, and all that. Now, was that with reference to productiveness? That will be the question in your minds. No, it was the "other circumstances." It was the speed, the facility, the aiding in developing the great business enterprises of this country; and you know, as a matter of very recent history, for it is not two weeks old, that the Postmaster-General has been engaged in negotiating to shorten the speed between New York and Chicago from thirty-nine to thirty-six hours—only three hours. It costs money to do that. It is not the productiveness that the Government is after, but it is the speed, the celerity, and that word, as I shall show you, had its origin many years ago in the statutes of the United States.

Now, gentlemen, I want to give you another comparison right in this connection, since comparisons seem to be in order, and what I am going to say to you now, gentlemen, is record truth. You will get it from the record. There is no trouble about it. They will not dispute their own records I suppose. You know they have been talking to you about the excessive cost of these routes under General Brady's administration. Now, taking the original contracts and all the increases for expedition, and the highest rate of pay on any route that has been spoken of in this case,

on any route that is increased and expedited during General Brady's administration was \$37 a mile—the very highest. Now mark what I tell you. I am not talking about the original contract price. I am talking about the price that was paid after the route had been increased in trips and expedited. In point of fact it was \$37 a mile on an average. Now, a comparison of this cost per mile under Brady with the rate of pay per mile on the number of routes during the previous contract terms shows how largely the cost of transporting the mails by star routes was decreased during his administration. In 1858, the Government paid for once-a-month service from Independence, Missouri, to Salt Lake, \$110 per mile. At a later period for once-a-week service over the same route \$173 per mile was paid. In 1858 the pay per mile for once-a-month service from Independence to Santa Fé was \$148. In 1859, for the same monthly service from San Antonio to San Diego, Cal., the pay per mile was \$197. In the same year for the same monthly service from Salt Lake to Placerville, Cal., the rate of pay per mile was \$129. From El Paso to Yuma, the same year, for weekly service, the pay per mile was \$112; and from Yuma to San Diego, for weekly service, \$118 per mile was paid. In 1871, for three-times-a-week service over part of the line, and for twice-a-week service over the rest, from Coucho to El Paso, the pay per mile was \$142. In the same year the pay for service from San Antonio to Fort Concho was \$92 per mile. And now, I have right here, gentlemen, a table showing the star-route service from 1853, year by year, up to the year 1879, including both years.

Mr. MERRICK. What are you going to read from ?

Mr. WILSON. I am reading from a report made by Congress, but I have it in another book.

Mr. MERRICK. Is it in the report ?

Mr. WILSON. It is in the report.

Mr. MERRICK. What is the document ?

Mr. WILSON. Miscellaneous Document No. 41, Thirty-sixth Congress. In 1853, the aggregate star service in miles was one hundred and eighty-six thousand nine hundred and seventy-three, and the aggregate cost was \$2,226,721. The average cost was 5.36 cents per mile of carriage. Now, this table shows that with the cost running up until 1868, when it reached its highest point, and when the mileage was one hundred and sixty-one thousand two hundred and sixty-three, the actual carriage in miles was forty-five million five hundred and forty thousand five hundred and eighty-seven, and the average cost per mile was 11.91 cents per mile. From 1853 to 1868 of course it had varied somewhat from year to year, but it had gradually grown up to over 11, nearly 12 cents per mile. In 1879 it was down to 9.24 cents per mile. Just before General Brady came into office it cost 9.97 cents per mile, and during the period that he held that position it gradually went down year by year until it reached 9.24 cents per mile. So that if we are to have comparisons, and you take the average of this service, it was cheaper under his administration than it had been for many years before. I present this to you, gentlemen, for the reason that the effort has been made to cast approbrium upon him by asserting in your presence that he had been recklessly and extravagantly and dishonestly conducting the affairs of that great office.

Now, gentlemen, another comparison was made by Colonel Bliss. He made a comparison between the letting of 1878 under the administration of General Brady and the letting of 1882—this letting that has recently occurred—for the purpose of showing to you the great difference there was between this present administration as he claimed it to

be, and the administration of my client. Now, let us look at that a moment and see whether or not any comparison of that kind is proper to be presented to the jury in this case. In the first place, by glancing at these maps, to which I call your attention, you will see that the routes are manifestly changed by reason of the construction of railroads. It is a singular fact, as I have before stated, that the great lines of railroads all over this country have been building on the very ground previously occupied by the great star-route lines. If anything more than another could indicate the wisdom of Congress in establishing mail routes, it is the fact that after these routes had been made the capitalists of the country began to make improvements in the way of railroads, selecting, of course, the lines that gave the best prospect for future returns, looking over the country for places in which to locate their lines of railroad and running them along the very lines which the Government selected as the lines for post-routes.

Now, these railroads, as they progress along the lines of these post-routes, cut off just to that extent the star routes, because the mails that were carried on horseback and by stage are transferred to the more expeditious and economical mode of transportation by rail.

Let me call your attention back to this Bismarck and Tongue River route. I pointed that out to you on the map yesterday, you will remember. Now, there was a road from Fort Bismarck over to Fort Keogh and since that time the railroad has been building right over that route. Do you suppose this present honest administration would advertise for that service? Why, no. All that mail goes upon the railroad, and that part of the star service is not embraced in any advertisement. So you see that he can make no sort of fair comparison between the two. That illustrates the point I am getting at. So that in undertaking to make a comparison of the star service of 1874 with that of 1879, or that of 1878 with that of 1882, it will be seen that the star service, especially as it was well known that the railroads were being built in great numbers and with very much expedition, was very much changed. Take this region of country to which I called your attention yesterday where the Denver and Rio Grande Railroad Company has been building so rapidly within the last three or four years. There were numerous star routes advertised for in 1878, but they had disappeared from the face of the earth in 1882. Routes that were hundreds of miles in length were very much reduced in extent by reason of these advancing railroads, or obliterated altogether. So that it is absolutely impossible to make any comparison of the one contract term with the other. Then, again, such a comparison is utterly useless and grossly misleading, for the reason that there is a very great difference between carrying a mail over a route that has already been established and over which the mails have been carried for four years before, where the roads are marked out, bridges built so far as they may be necessary, stations erected, road agents driven away, Indians removed, and a thousand other circumstances that might be alluded to which existed in the one case and which made it hazardous and expensive to carry the mails, have entirely disappeared, and are not to be encountered in the other case. Supplies for feeding the men and animals had to be hauled in the one case, whereas in the other case settlers had come in and opened up farms, and the supplies were right there on the ground. Now, here is a difference in the situation of affairs by reason of which the man who bids four years later can carry the mail at a very largely reduced price from that which the pioneer was justly entitled to receive. Now, it

seems to me, that for a Government prosecutor to stand up in the face of an intelligent jury and by means of such comparisons to undertake to reflect discredit and charge fraud upon a Government officer, requires a cheek of polished brass.

Allow me to give you in this connection another specific and pointed illustration. The route from Rawlins to White River, or rather from White River to Rawlins, was one which ran from the Union Pacific Railroad at Rawlins, about two hundred and fifty miles west of Cheyenne, down to White River. At White River there was an Indian agency. It is a well known historical fact that at that agency there was a large band of Indians, hostile, refractory in character, so much so that the Government was compelled to keep troops there to hold them in subjection. That is the point, gentlemen, I need not remind you, where that fearful massacre occurred when Meeker and his family were destroyed. The postmaster was killed; the stock of the route was run away, and the route was literally destroyed, the Government being compelled to put on a line of couriers of its own in order to get the mails down from Rawlins to White River during the time that these things were going on. The country was literally overrun with Indians, and any man who undertook to travel through it unprotected by military, traveled with his life in his hand. Now, what sense is there, what reason is there, how unconscionable it is for this prosecution to stand here before you and compare the letting of 1878, when a state of affairs like this existed, with the letting of 1882, when all is peace and tranquillity and the mails can be carried without danger to any one whomsoever.

Complaint is made of Mr. Brady having shown leniency to contractors relative to the matter of putting on the service after the contract had been awarded, and it is urged before you as an indication of a disposition to grant favors to special contractors, and more than an indication of favoritism, as an indication of a criminal combination with special contractors. I say to you that the record will show, and the evidence in this case will prove, that in not a single instance was any favoritism of this kind shown, excepting in cases where there were the most substantial and just reasons for so doing.

I will give you an instance. Along the line of route from Canyon City to Camp McDermott, one of the routes about which Mr. Bliss talked, where he said favoritism was shown to the contractor, the Bannock Indians were located. There was an outbreak of these Indians, and I need not stop to describe to you what an Indian war means. It is sufficient for me simply to mention the fact to satisfy you that it was not within the bounds of reasonable possibility for a contractor to put service upon a mail route that was infested with Indians on the war path in such a case as this, and in this case an extension of time was granted to the contractor to put on the service. Did he get his pay while he did not have it on? No, gentlemen, the records of the department will show you he did not. I desire you to say whether you think that the granting of that time is an indication of fraud. If he had insisted upon placing service upon this route under such circumstances, it would have been an evidence of inhumanity and barbarity, and he would have been condemned by the press and by decent people throughout the country.

But, gentlemen, right in that connection I want to call your attention to another matter that was brought to your attention by Colonel Bliss in relation to this identical route. Fort Harney is on that route. You remember that he said to you that the officers at Fort Harney

were complaining because these contractors did not put the service on that route. He said you would find in the archives of the department letters complaining that they could not get their service on that route, and just before that he had been saying to you that the service on that route was not needed. Now, what on earth were these Army officers writing and complaining about if no service was needed on that route? I know, gentlemen, that after these Indian troubles ceased, and peace prevailed there, that there was a delay in putting the service on that route. Now, why? The proof will show to you that by the time the Government brought these Indians under subjection it was the dead of winter. That whole country had been stripped of stock and of supplies, and there was nothing in the country. The testimony will show to you that the contractor had to go to Portland and to San Francisco to get his stock and supplies to put upon that route. He could not do it in a day or in an hour. He could not have his horses and his mules corraled in that Indian country, as soon as the Government got these Indians subjected, to stock that line, and under this state of affairs time was given him to get these supplies and put the stock on the service, and while they were spending their days and nights and pouring out their money to get their supplies there and stock this route and put on this mail these Army officers were complaining that this service was not put on. But we will show you, gentlemen of the jury, by the testimony in this case, that just as soon as the most industrious mail contractor of all the mail contractors—the man who has made a business of it during his life almost, and who is one of the best contractors in the service—could by any possibility get the stock there, he stocked that road and carried that mail that these Army officers wanted to have.

Now, allow me to go back to this route from Bismarck to Tongue River. This route lies through the hunting grounds of these Indians in battle with whom Custer lost his life. These Indians were still infesting that country when this route was let. You must not blame the Post-Office Department, or any member thereof, for advertising for service on this route, because Congress created that route, and not the Postmaster-General nor his assistant, and those who were interested were clamorous for that service. Now, the records of the department show that one of the reasons of the contractor for not wishing to put on the service at all was that his men had been shot at by the Indians, and going back to my comparison I want you to say whether you think that the man who marked out the road where there was no road, who carried the mails through a country in which there were such dangers to life and property, and into which he had to carry his supplies, and in the establishment of which route he had to expend all the money he received from it, according to the learned prosecutor in this case, and according to the records as the proof will show it, could be expected to carry that mail for the same compensation that another could carry it for four years later when the road had been made, the Indians removed, and the country had been filled up with settlers, and there were towns and villages scattered along the route. It cannot be said, gentlemen, that that is any fair comparison, and I know that this jury upon such comparisons will never condemn or harm a hair on the head of any living man.

Now, there is another point to which I must call your attention, gentlemen, right here in connection with this matter of subcontract, and I am going to be very brief, for I see I am taking a great deal more time than I intended. I expected to be through before this. Mr. Bliss

made a great point of this. He said the subcontracts were placed on file, and showed what the subcontractor was to get, and then that General Brady increased the service on the route and expedited it, and that ran the price up, and that put money in his pocket, and he says that General Brady, having these on file in the office there, ought to have seen that the service did not cost that much, because the subcontractor was carrying it; that there was the evidence of what he was getting, and that that is an evidence or badge of fraud. Now, let us see. I have already called your attention to what is called speculative bidding. There are a great many men who bid and who expect to carry out some of their contracts and expect to sublet others. Now, what is the law in regard to this, gentlemen? Why, the contractor, when he enters into a contract, is compelled to give a bond that he will carry that mail promptly, and if he does not carry that mail promptly, according to schedule time, making every trip, he has to suffer, and if he fails to carry that mail through that four years he becomes a failing contractor. Then two things happen. First, it happens that he cannot get any more contracts, for the department will not recognize a failing contractor afterwards as a bidder. Once he has failed then he is a "goner" as a contractor in that department. If he fails as a contractor then another thing happens. The Government lets that contract at the best rate it can, and if it costs tenfold over what he had taken it for under his contract the Government makes him pay the difference between his contract price and that which it costs the Government to carry it. So, you see, he takes a pretty large risk.

Mr. TOTTEN. He is also subject to fine and imprisonment.

Mr. WILSON. He takes that risk. What risk does the subcontractor take? None on earth. He gives no bond. He can throw up his subcontract at any moment. Before you get through with this case you will find cases where the snow was on the line of this route to the depth of twenty feet. You will find cases where the contractors started out with their horses, putting horses and mules in advance to break the pathway through the snows in order that they might get through these mountain fastnesses with these mails on schedule time. Some of the most extraordinary storms that have ever occurred, or that were ever known to the inhabitants of that country, occurred during the very period of which we are talking. Now, then. Here a contractor has sublet a contract to a subcontractor. He has taken these risks, he has this responsibility upon him, he has these liabilities upon him. He has made his subcontract, and he is getting a little margin between the subcontract and the contract price. Now, then, here comes one of these blizzards, about which you will hear a great deal said before we get through with this case, or anything else happens, and the subcontractor lays down his contract and says "I won't carry the mail another day." Now what is the contractor to do? Has he any remedy against the subcontractor? None. He has to proceed to carry that mail, no matter how long the route may be, no matter what the expense may be, because if he does not then the Government holds him liable on his bond and holds him criminally liable, as my associate suggested just now. Now you will find when you come to look at this thing that in some cases they make a little money and in some cases they make a great deal; that in some cases they lose a little and in some cases they lose a great deal. On the general average it is nip and tuck whether they come out even. I think you will find in this case, so far as subcontractors, and so forth, are concerned that there is nothing that will be developed in the facts of

this case that will throw the slightest shadow of suspicion upon my client.

Another point Mr. Bliss suggested to you was that General Brady had made orders and antedated them. That is to say, to-day he makes an order increasing and expediting the service, and dates it back three or six months, giving a contractor an advantage of that kind, and therefore taking money out of the Treasury. Gentlemen of the jury, if he did that he violated a positive and long-standing law upon the statute-book. There is no doubt about that. But I stand here before you to-day to utterly, and with the utmost emphasis deny that there is a single solitary case of that kind in existence upon the records of that department. It is not true. I will not say that these gentlemen know that it is not true. I say it is not true. I defy these gentlemen to show a single solitary case of that kind. They may show a case or two of this kind, and they are cases that have often happened in that department: There would come an emergency for increase and expedition of service. They did not know the length of the increase. They did not know all that was necessary to be known in order to make the proper entry upon the books of the department. They would give the order by telegraph, and after all the data was ascertained, they would make the entry as of the date of that telegram. There was never any case, and I defy these energetic gentlemen to point to a case of the kind that Colonel Bliss threw into the faces of this jury.

Mr. MERRICK. I accept the challenge, sir.

Mr. WILSON. Well, sir; I will show you how we come out.

Mr. MERRICK. Very well; I accept the challenge.

Mr. WILSON. Now, another case to which he called your attention. He says that General Brady made orders for increase of service and increase of pay where the service was already being performed according to the increase. Now, if I understand the fact of the case as to that it is this: Here would spring up one of these places about which we have been talking where there were but a few people living. There was no inducement for anybody to live there. Gold would be discovered, silver would be discovered, people would flock in there, enterprising men would run in stage lines where there was a service of a trip a week and on a very slow schedule. But the people could not get in there once a week and a mile and a quarter an hour. They were hurrying to get there, and when they wanted to get away they hurried away and hurried back again, and the consequence was, of course, that stage lines were sent into these remote places. They went frequently, and they went expeditiously, and the contractor would carry the mails faster than he agreed to carry them, and he would carry them if necessary oftener than he agreed to carry them. But he was doing service that he never agreed to do. These mails were necessary. This speed was necessary. He was giving to the Government service that his contract did not call upon him to give, and the Government increased his contract so as to meet the wants of the country. What these gentlemen are saying is simply this: They say that because this state of affairs existed, and this man was in a condition to carry the mail at the increased speed, and was actually doing it, that the Government ought not to pay for it, that it ought to take advantage of the situation and not pay that man for the service it was getting. If they can get anything out of that they are entirely welcome to it.

Mr. MERRICK. Do you mean to say that the contractor has a right

to increase the speed without orders from the Government and then to demand pay for it?

Mr. WILSON. No, sir; I do not mean to say it, and nothing of that kind was ever done. But the contractor did call upon the department and ask their attention to the fact that this additional service and expedition was needed, and although he was actually performing it, they said, "Your contract does not call for it; and we will make your contract conform to the actual circumstances of the case;" and they simply paid him for that which he was not bound to do, and made his contract so as to give him compensation for that service. But how did Brady know, and how could he know, that this man had been running these stages to these mining post-offices? I will not discuss that.

There was a point made on mail bills, but I will pass that over.

If comparisons are to be made, this kind of a comparison will bring itself to your knowledge. You know there is such a thing as third and fourth class matter. There was one route out there where they wanted the mails carried rapidly, that is to say, the letters; but about the newspaper and merchandise business there was not so much haste. And, by the way, gentlemen, the merchandise business is a feature in all this mail transportation in that region of country. You will find mails there that had not many letters, but that had a great many packages of merchandise in them. If comparisons are to be made, you will find a comparison something like this: One contractor had agreed to carry the letter-mail at a high rate of speed, and this third and fourth class matter at a low rate of speed and not so often a week. Well, it turned out in the history of that case that people were sent to look over these routes and see if they could not find where somebody was cheating somebody else or cheating the Government, and they came back and said, "Oh, yes; this contractor is cheating the Government. These third and fourth class mails are not being carried at all. They are carrying the letter-mail all right, but the third and fourth class mail, which is to go through three or four times a week, he is not carrying at all." So they stopped his pay. After awhile the thing began to be looked into, and they found that this enterprising contractor, instead of carrying that third and fourth class mail not at all, or only two or three times a week on a slow schedule, had put this third and fourth class mail on his coaches and went through daily at a high rate of speed, and put in this merchandise; instead of not carrying it he had been carrying it daily at an increased rate of speed, and not charging the Government anything for so doing. Yet the Government had refused to pay him because somebody had reported that he did not carry it at all, while he was carrying it six or seven times a week instead of two or three as the contract required.

Mr. MERRICK. What route is that?

Mr. WILSON. I will give it to you in due time. I haven't it in my mind just now.

Well, of course that was a great injustice, and when it came to the notice of the department that stoppage of his pay was promptly canceled and the money was paid to him as it ought to have been. That was not in the administration of General Brady. It was under this present honest administration. I give them the benefit of being honest for that was honest. He ought to have been paid and he was paid. That shows to you, gentlemen of the jury, what you can get by comparison, and how easy it is to mislead and misguide by statements in regard to matters such as this.

A great deal has been said in regard to fraudulent petitions, fraudu-

lent letters, and all that sort of thing. At the proper time I shall have something to say to the court in regard to these petitions and letters, &c., which they allege to be fraudulent, but it will be useless for me to take up your time now; indeed, it would scarcely be proper for me to take up your time with what I have to say upon that subject. But I do want to ask in your presence whether there was anything in the opening statement of Colonel Bliss to indicate to you any proof that General Brady ever had any knowledge whatever of the manner in which any paper was gotten up—who was its author, or anything about it. Oh, no. They just simply ask you to infer that he did know; and they say that you are to infer this because the charge is conspiracy; and that whenever they have established the conspiracy then whatever any one man does in furtherance of that conspiracy every other man is bound for, and that if they can establish that there were fraudulent papers brought into any of these cases that General Brady is chargeable with knowledge or chargeable with the fraud, whatever it may be. Now, I know nothing about these papers, nor does he. I am not able to state anything to you about them, and I do not propose to state anything about them. But I have something to say to you and to the court in regard to the proposition that Mr. Bliss presented to you as to what is the proper proof in a case of conspiracy. Recollect now, gentlemen, the charge against my client is that he conspired with these other parties to defraud the Government of the United States. I noticed in making his statement that he referred to a great many acts that he said had been done which antedated the time when it is alleged that this conspiracy was made. [Turning to the court.] Now, if your honor please, in this case of Hirsch the Supreme Court of the United States said :

The gravamen of the offense here is the conspiracy. For this there must be more than one person engaged. Although by the statute something more than the common-law definition of a conspiracy is necessary to complete the offense, to wit, some act done to effect the object of the conspiracy, it remains true that the combination of minds in an unlawful purpose is the foundation of an offense, and that a party who does not join in the previous conspiracy cannot under this section be convicted of the overt act.

It is the combination of minds for the unlawful purpose, says the Supreme Court of the United States. Now, gentlemen of the jury, Colonel Bliss said to you that this was to be brought about by a variety of circumstances all converging, that people did not come out into the open sunshine and enter into their combination, they did not do these things openly and before the world, they did not enter into written contract, but their machinations were secret and covered up; and that a great variety of circumstances, one linking and bearing upon the other, and all converging together, would show the conspiracy. Now, the court will tell you, gentlemen of the jury, that the parties must have met. I am not going to dispute in the presence of the court that in ordinary cases where conspiracy is charged against parties you have the right to get at the question as to whether or not there was a combination of the parties to accomplish the unlawful purpose by what Colonel Bliss saw fit to call circumstantial evidence. There is no difference in the law with reference to these questions, but there is a great difference in cases, and this is one of the cases as to which the difference exists. Here is a man sitting at a table day after day through the year discharging the duties of a great office. He is making the orders day after day which the law imposes upon him the duty of making.

Now, then, the proof of making such an order as that has no tend-

ency to establish the conspiracy. When they undertake to establish the conspiracy in this case it is not to be done by pointing out the orders that have been made day by day by a public officer in the regular routine discharge of his duty. They must go beyond that and outside of that. They must find the evidence that my client entered into a conspiracy with these other parties. Take one of these heads of departments sitting there exercising the discretionary powers, every day, conferred upon him by the law. Is it to be said that those orders there made in the regular discharge of his official duty, being just such duty as the law requires of him, can be used for the purpose of indicating that he had been engaged in a conspiracy? No; you have got to start behind that. You must find the evidence of the conspiracy somewhere beyond that; and I say now——

Mr. MERRICK. [Interposing.] Allow me to interrupt you.

Mr. WILSON. Don't interrupt me; because I shall not say another word on the subject.

Mr. MERRICK. It seems to me that instead of making an opening address Mr. Wilson is delivering an argument for the court on the law and testimony.

Mr. WILSON. May it please your honor, Colonel Bliss was——

Mr. MERRICK. [Interposing.] I should like to reply to the gentleman very much at the proper moment on that point.

Mr. WILSON. If your honor please, Colonel Bliss was very particular to call the attention of the jury to this very thing. I am exactly in his track, am I not?

The COURT. I don't remember.

Mr. WILSON. I think the jury will bar me out in my statement.

The COURT. I do not remember that he argued this proposition at all.

Mr. MERRICK. No. He stated, I think, the proposition that circumstantial evidence would have to be used to prove a conspiracy.

The COURT. I understand Judge Wilson now to state the law correctly as to the means of proving the conspiracy.

Mr. MERRICK. He is arguing.

The COURT. I concur with his statement——

Mr. MERRICK. I wish your honor would hear me.

The COURT. I concur with his statement that a conspiracy may be made out by circumstances.

Mr. MERRICK. Certainly.

The COURT. But as to the other proposition that the overt act done in pursuance of the conspiracy, being an act done by an officer in his regular routine of office business is not an overt act, that will have to be decided by the court hereafter, I think, Mr. Wilson. You need not submit that question to the jury.

Mr. WILSON. No; I addressed myself to the court, your honor.

Mr. MERRICK. We have not got there yet.

The COURT. You are engaged now in opening to the jury on behalf of your clients.

Mr. WILSON. I am.

The COURT. I think you have gone far enough now.

Mr. MERRICK. I want a chance to say something on that subject myself.

Mr. WILSON. What I was stating to your honor was simply this: as to what is competent proof of the conspiracy.

The COURT. That is a question for the court.

Mr. WILSON. [To the jury.] Now Mr. Bliss has said to you, gentle-

men, that one of these defendants, Mr. Rerdell, made a statement or a confession to Mr. James and Mr. MacVeagh and Mr. Woodward. I have heard that statement. I know why that statement by Mr. Rerdell was made. I know what he said was the reason for making it. I know that that statement, whatever may have been Mr. Rerdell's purpose in making it, is not true.

Mr. MERRICK. You know it. Are you testifying?

Mr. WILSON. No, sir; I am not testifying. I know it in this way, I will take that back.

The COURT. That is certainly improper. No counsel has a right to throw himself into the jury-box on his own ground.

Mr. WILSON. I take that back, and beg the pardon of the jury and the court. I ought not to have stated it. I say to you, gentlemen of the jury, that we will prove to you that that statement, in all its details, is not true. That is right, is it not, your honor?

The COURT. That will answer.

Mr. WILSON. That is what I intended to say, and should have said before.

Mr. MERRICK. So I supposed.

Mr. WILSON. I am not going into the details of that statement now to show to you wherein or whereby it is not true; but I say to you that that will be the proof in this case. Every fact that was stated to Mr. James and to Mr. MacVeagh, will be taken seriatim by each one of the persons who were mentioned in that connection; and there were persons mentioned who are not my clients, and are not connected with this case. We will prove by their testimony that there was not a word of truth in it; not a word. I am authorized to say—but no matter; I probably would have to step a little beyond the bounds. I will leave it there.

That statement was made at a time as to which I am satisfied the court will tell you that you cannot consider it as against anybody in this case except Mr. Rerdell. Colonel Bliss said to you that he would prove by a witness that General Brady admitted to him that he had received money from these contractors and others. [To counsel for the Government.] Do I quote it correctly?

Mr. KER. Just barely; not quite.

Mr. MERRICK. I do not recollect what his exact language was about it; but I think that is probably substantially what he said.

Mr. WILSON. I do not want to misstate.

Mr. MERRICK. I have not got it exactly in my mind.

Mr. WILSON. I have not read anything that Colonel Bliss said.

Mr. KER. His language was that he expected to prove by a witness a conversation between the witness and General Brady, in which General Brady wanted to get the same from this witness that he got from the others.

Mr. WILSON. If he stated anything of that kind it has utterly escaped my attention.

The COURT. It has escaped mine, too.

Mr. WILSON. He said nothing about that, I am quite sure.

Mr. CARPENTER. No; he did not say that.

Mr. WILSON. Gentlemen, we are coming to the vitals of this case. I have stated to you what I understood him to say. Then he went on to make this additional statement: That he hoped to prove thus and so. "Hoped" was the very word he used.

The COURT. You can say you hope to prove the contrary, I suppose.

Mr. WILSON. No, your honor; I shall say more than that, with the

permission of court. I shall say that they cannot prove that fact by any living man, nor could they prove that fact if they could raise the dead. I say to you that that is not——

The COURT. [Interposing.] What fact are you speaking of?

Mr. WILSON. Of the fact that he said that General Brady had admitted to a man that he had received money from these contractors.

The COURT. He may have said that, but I did not hear it.

Mr. CARPENTER. He did say it.

Mr. TOTTEN. He said it undoubtedly.

The COURT. It escaped my attention.

Mr. CARPENTER. It is in the record.

Mr. MERRICK. Get it.

The COURT. [To Mr. Wilson.] If that is so, go on.

Mr. MERRICK. When Mr. Wilson just now appealed to me upon the subject I replied that I thought Mr. Wilson had stated substantially in his remarks a few moments ago what Mr. Bliss said. I understood those remarks to be that Mr. Bliss had said that he expected to prove by witnesses or a witness that General Brady had admitted the receipt of money growing out of these transactions, or the equivalent of money, or something of that sort. That was his statement.

Mr. CARPENTER. That is just what he did say.

The COURT. If he made such a statement as that I have forgotten hearing it. I understood Mr. Bliss to say to the jury that they would prove by the confessions of Rerdell that the conspiracy existed in regard to these routes between these parties for a division of the money allowed for extra service and expedition, and probably some detailed facts under that statement. So far as Brady is concerned, perhaps I overlooked it, but I do not remember now to have heard Mr. Bliss say that he would be able to prove Brady's admissions, or any such thing as that.

Mr. MERRICK. My impression is that something equivalent——

The COURT. [Interposing.] He said that after Rerdell left New York he received two telegrams——

Mr. WILSON. [Interposing.] No; that was the Rerdell matter, your honor.

The COURT. I say the Rerdell matter. After Rerdell left New York, he received two telegrams to return and not to ruin his family. Those were not from Brady, but were from Dorsey.

Mr. CARPENTER. If the court please, here is what Mr. Bliss said:

We shall place before you, gentlemen of the jury, and I ask you to remember it, the distinct admission of Mr. Brady that he did receive money, not only from these contractors, but from others.

Mr. MERRICK. That is it, sir.

Mr. WILSON. Read on.

Mr. CARPENTER:

And we shall give you confirmatory evidence upon that subject; and we hope to convince you, beyond all dispute, that Brady did not do this dirty work which took from the Treasury large sums of money, as I explained to you on Friday, from the mere desire to occupy his idle hands; but he did it corruptly.

Mr. MERRICK. That is it exactly; and I reiterate it in reply to Mr. Wilson.

Mr. CARPENTER. What he did say was, that he would put a witness on the stand aside from Rerdell to prove the fact.

Mr. MERRICK. That is the statement and I reiterate it.

The COURT. Now, Judge Wilson, you can state what you mean to prove on the other side.

Mr. MERRICK. He says we cannot prove it. More properly he should

state what he expects to prove in reply. He does not know what we are going to do about it.

Mr. WILSON. Gentlemen, I was not very far wrong in my recollection, as you see.

Mr. MERRICK. I stated at first that you were right.

Mr. WILSON. Mr. Merrick agreed with me about it in the beginning. I say to you, gentlemen of the jury, that they will never prove any such thing. I am a little in doubt in my own mind how far I can go with reference to this matter. I do not want to transgress the rules of the court or the proprieties of this occasion, but whenever they do introduce any testimony on that subject, if they ever do, we will show to you that that testimony is absolutely and unqualifiedly false in all its particulars. I would go much further than that, gentlemen, if I could do so under the rules of the court.

The COURT. The rules of the court merely prohibit counsel from declaring the facts on his own knowledge, pledging his own character that any statement is not true.

Mr. WILSON. If it is proper for me to say so I say to this jury that my client informs me that that charge is absolutely and unqualifiedly false in all its essence and details and particulars; and I desire, as far as I may under the rules of the court, to so brand it.

Mr. MERRICK. I suppose you intend to put him on the stand to swear that it was false.

The COURT. He is a competent witness.

Mr. MERRICK. He is a competent witness.

Mr. WILSON. I am not compelled to put him on the stand. I can vindicate him in other ways if I want to.

Mr. MERRICK. But he cannot state what his client tells him about this matter, unless he intends to put him on the stand.

The COURT. I do not know that. The rule merely excluded the counsel from pledging the weight of his own character with the jury as to any fact.

Mr. MERRICK. I am aware of that.

The COURT. He may state what his client tells him he will be able to prove; because then the jury will not be influenced by the character of that counsel.

Mr. MERRICK. My object was not only to object and to correct as far as might be proper, but to point to the statement he now makes that he is so informed by his client. That is, the witness, he is to prove it by, and that is the source of his information.

The COURT. I see no objection to that.

Mr. MERRICK. We stated what we expected to prove by witnesses, and we get the information from the witnesses who will prove it, and have the confirmatory evidence in our possession.

The COURT. He states that he will be able to prove by a competent witness exactly the reverse.

Mr. WILSON. And I state further to the court that I expect whoever that man may be or those men may be——

Mr. MERRICK. [Interposing.] Men.

Mr. WILSON. [Continuing.] ——that when they come before this jury to testify to anything like that, before they leave the witness stand, to convince the jury that they have been committing willful and deliberate perjury.

Mr. MERRICK. That is an anticipation.

Mr. WILSON. It is an anticipation, because when men tell lies they are generally caught in it on cross-examination.

Mr. MERRICK. Now we have two statements opposing each other. We will see who is the liar.

Mr. WILSON. We will see. Now, gentlemen of the jury, I have attempted in what I have been saying to follow the statement of Colonel Bliss. Undoubtedly I have omitted to mention things that he went into, a great many details that perhaps I ought to have mentioned. Yet I think I have occupied more of your time than I ought to have occupied.

I have thus far alluded to this case as affecting one of my clients, General Brady. I have had some doubt in my mind after the statement that Colonel Bliss made whether I ought to say a single word with reference to Mr. Turner. What he said as to Turner seemed to be for the purpose of filling in, in his statements about General Brady, a sort of an incident; and what he stated as to Turner was so meager that it has seemed to me to be utterly unnecessary that I should say a single word in regard to him. They allege that he conspired with these other defendants. They simply allege, you will notice, in this indictment, that Turner conspired. Then from thenceforward they do not mention an act of his in connection with this business. Not one; not a single one. Of course, I understand the law to be exactly as his honor does in regard to this. That when they once establish a conspiracy that these parties combined and confederated together to cheat the United States, then the act of any one, done in pursuance of the conspiracy, binds the whole or affects the whole, and makes all guilty alike. Now, so far as Turner is concerned, permit me to say, very briefly, that this will turn out to be the evidence in the case: He had been for some years in the Post-Office Department. Just before this letting of 1878 he had been transferred from the desk he had formerly occupied to this particular desk that he occupied during the time these things were happening. The advertisement for proposals for this letting, under which these routes were contracted for, had already been prepared. The man who occupies that desk has the duty of preparing the advertisements. But Mr. Turner went to that desk in 1878.

Mr. TURNER. Eighteen hundred and seventy-seven.

Mr. WILSON. After this advertisement had been made up. It was in the hands of the printer when he went to that desk, and the first time he ever occupied that desk. He had nothing more to do with these people than you or I. But his worth and his efficiency were known by his long service there in the department, and he was put at the head of this responsible desk. He went there, as I said, after this advertisement was in the hands of the printer. When it came from the printer, what he had to do with it was simply to read the proof and send it back again to be finally printed. That was his connection with it. Now, I do not know just what they are going to try to prove so far as Turner is concerned, but I can say to you, gentlemen, that we expect to show, so far as Mr. Turner is concerned, if they assail his conduct, that he has been the most painstaking and persistent man in holding these contractors down to the very lowest notch that he could get them so far as he had anything to do with them; and if he is assailed I expect to prove to you by the testimony of the most reputable witnesses in the department that by his vigilance, his untiring watchfulness—going there early in the morning, and working late at night in order to keep his desk clear—he has saved this Government hundreds and hundreds of thousands of dollars. I expect, gentlemen of the jury, before this case closes, that my good friend here (Mr. Merrick), who always wants to be just, will make good his promise made at the early stage of this case,

and will say to this court and to this jury, "There is no cause of complaint against Mr. Turner, and he must be dropped out of this case." I expect, gentlemen of the jury, with the utmost confidence, that that will happen, and that his honor will say that this young man never ought to have been dragged into this controversy. I say to you, gentlemen of the jury, that there will be no proof that Mr. Turner ever conspired with anybody.

Gentlemen, this prosecution is a very flexible sort of thing. The first of this conspiracy we heard, it was alleged to have been made on the 10th of March. The next time we heard of it it was alleged to have been made on the 1st of May. In this indictment they allege it was made on the 23d of May. We are anchored down to the 23d of May. Now, it will turn out in the evidence that on the 23d of May one of these defendants was in Little Rock, another was in Independence, Mo., another was in Sacramento, and another was in Bismarck. It was a conspiracy evidently made at very long range. Now, gentlemen, I defy this prosecution to prove that my clients ever entered into a conspiracy. I throw down the gauntlet to them now, and I defy them to prove, by any testimony that is reputable, or has any approximation to reputability, that a single farthing of the Government's money ever went improperly into the pocket of either of my clients.

Mr. Bliss, as I thought very ungenerously, sneered at General Brady, at the title by which his friends see fit to designate him. He did not get that title, gentlemen, by being Second Assistant Postmaster-General. I know something of his history, and the country's history tell something about him. He earned that title, as his commission tells, by long and meritorious service in the war. He went in a youth, at the very beginning, and he staid until the very end. He went in at the head of a company, and he came out at the end of that great struggle, having gone through it all, with a record which he can leave as a legacy to his children, and of which they will never be ashamed. For gallant and meritorious services he was brevetted a brigadier-general, and let him sneer who will, that is how he came to be known as General Brady.

And Turner, a boy, went forth to do battle for his country. He wears the scars of that great strife. In the fierce struggle at Gettysburg, on Round Top where the fight was the fiercest, and the death-dealing missiles flew the thickest, he received the wound that has made him a cripple for his life. For years since, he has served the Government humbly but faithfully in its civil affairs. He has for his reward a base and wicked assault upon his good name.

I shall expect at your hands, gentlemen of the jury, a verdict which will be a thorough and complete vindication of my clients against these charges. I thank you for your attention, and will now close.

At this point (12 o'clock and 32 minutes p. m.) the court took a recess for half an hour.

AFTER RECESS.

L. G. HINE, Esq.,

addressed the jury on behalf of the defendants, John R. Miner and Harvey M. Vaile, as follows:

I propose, gentlemen, to state to you briefly how Mr. Vaile and Mr. Miner came into connection with the other defendants in this case, into acquaintance with them, how it happened, and all about it. I shall

leave the argument of this case on the evidence to my closing on their behalf, if, in the kindly administration of Providence, I may live so long as to reach that time. I shall leave all argument on the facts, and all statements of what has been proved, to closing the case on their behalf. If I am rightly informed, I shall have no difficulty there. So assured have I been from the statements that they have made to me that there was nothing that they or I need fear in this case that I have not spent three hours of time until last Friday, when I was called to come in court, in investigating the whole case. That time was spent especially in hearing a recital from them of their connection with what is called this grand conspiracy, and satisfying myself that there was nothing that need cause any apprehension on my part or theirs. So that you will understand clearly and distinctly, that while I represent them, and represent them exclusively in this case, if anything should transpire that requires more attention from me or any other lawyer, my apology for it is that they have not stated their case to me. I believe they have; and I am going into the trial of this case believing that they have stated their relations to these contracts and their relations to these parties truthfully. If I acquit myself with fair ability upon the hypothesis that they have stated to me their case fully my conscience is free, the retainer they have paid me will have been fully earned, and my duty fully performed. And if they are guilty, then it may be their misfortune that they have employed a person of no more ability or legal knowledge than I possess; but it will be a misfortune for which they are responsible and for which I am not responsible.

We start out on this case, gentlemen, with this advantage, and so do all the defendants, that so far as the letting of these contracts is concerned there is no reason to find fault. The contracts were properly given out. They do not complain that these men were not serving the Government faithfully and properly when they gave them the contracts for carrying the mail over these different routes. They have some seventeen or nineteen or twenty in this indictment. All the parties named in this indictment, secured as the evidence will show to you, perhaps, one hundred and twenty or one hundred and thirty or one hundred and thirty-four contracts. But so far as obtaining the contracts is concerned the Government says that those contracts were let to the lowest bidder, the records will show that from ten to fifteen different bids were made upon all these different routes, and that these parties now charged with conspiracy were the lowest bidders on them all. So that down to the point that the legal obligation of the Government to these parties commenced there is no ground for complaint. You will not forget, during the progress of this case, that in the inception of this they make no complaint against us for the manner in which we got into it. We came into it the same as any other honest citizens come into any contract or legal relations one with the other. The parties bid, as they were invited to bid by the Government, and bidding upon those contracts, secured them. Why? Because they were the lowest bidders. Hence of course, being the lowest bidders and the acceptance of their bid being for the interest of the Government, they so far certainly did not enter into any conspiracy to injure or defraud the Government, nor do they charge us with having done so.

Now we will start from that point. Those contracts they tell us in their indictment were made on the 15th of March, 1878, so that we need not trouble ourselves very much with anything certainly that occurred prior to that date. I shall trouble you a little in giving you the antecedents of these parties prior to that date, and show how they hap-

pened to come together ; because I have the precedent in the statement of Mr. Bliss, that antecedents are a pretty good thing to spread before a jury especially when the charge is that of conspiracy. On the 15th of March, 1878, they say the contracts were let. A question that the court will determine during the progress of this case is whether those were contracts or not contracts. There was an offer to take a contract, a promise that they would enter into a contract on some future time, made on that day, made because the proposals were to be opened on the 15th of March. Those proposals simply said to the Government, " If we are the lowest bidders we will take these contracts, and we will carry the mail so and so." The proposals are different from the contracts, different in their terms, different in very many respects, and constituting in no respect the contract. Usually there are different bondsmen upon them. It was a promise simply that the parties would enter into a contract subsequent to the 15th of March, 1878, and that promise might or might not be fulfilled. If fulfilled, then no breach of contract occurred. If not fulfilled the result is a breach of contract between the parties ; nothing else. That is the legal relation of these contracts to these parties. I need say no more at present upon that point. It will be discussed before you during the progress of the case.

Having found that these contracts were properly entered into, and having found that the Government were right in accepting these persons as the lowest bidders ; having found that there is no ground for complaint at all in the manner in which they obtained these contracts, giving abundant security for the execution of the trust that they proposed the Government should repose in them, we come down to the specific charges that they have made. It is essential, as I suggested before, that we know somewhat of the antecedents of the parties, because when men enter into a conspiracy it is always well to know how it happens that they come together ; how it happens that they commingle together ; get together for the purpose of doing a wrong to somebody.

Now, as to Mr. Miner. We find that Mr. Miner, as stated by Colonel Bliss, was a resident of the city of Sandusky ; raised in the same county where I was born (no credit for that). He was there for ten or twelve years before he came to the city of Washington as a business man. The managing director of the Sandusky Wheel Company, an old established corporation there in the city with a large capital and doing a large business. He was the business director of it, interested largely in manufacturing. Mr. S. W. Dorsey (perhaps I had better say Senator Dorsey, so that S. W. and J. W. may not be confounded—he is an ex-Senator, but when I refer to him I will call him Senator Dorsey) some years before he came here to the Senate was in Sandusky and established what was known as the Sandusky Tool Company. Mr. Miner had been for years the managing director of the Sandusky Wheel Company, as I said ; and Senator Dorsey came to Sandusky and established the Sandusky Tool Company. Mr. Miner took a considerable block of stock in it ; to be accurate, \$4,000. We all pay up our stock in that region of country. In that manner they formed an acquaintance and came together in a business way. They were acquainted with each other for seven, eight, or ten years. No matter how long in a business way before they claim that this conspiracy occurred. Mr. Miner, by close attention to business, reached impaired health. His appearance now shows that. For two or three years before he came to this city to stay any considerable length of time his health became very much impaired. His attention to business was so

close that he gave himself no time for amusement. He gave himself no time for anything, except advancing the interests of his company, keeping the books, working at the bench from time to time, and superintending large numbers of men. He had been here two or three winters before, for one and two weeks as a matter of health, and a matter of relaxation; but in the fall of 1877 his health became so impaired that he was absolutely compelled and forced to leave that business and do something else, though retaining, of course, his interest in the company. So we find him coming here in the fall of 1877—or December, I think it was, to spend the winter in a better climate. He remained here during that month. The time weighed upon his hands and became irksome and finally he was looking around for something to do, and found Mr. Dorsey here as Senator. He had a room in the third story of Mr. Dorsey's residence, you will find, and went in and out as he pleased, made it his bedroom, and used it as he wished. That is the origin of his acquaintance, and the business relations between Miner and Senator Dorsey. You will notice that they came together in the most natural way in the world. Mr. Miner came here as a stranger, knowing a Senator in a business way, naturally going to visit him, each one respecting the other, a friendly feeling existing between them, and they came together in that way. Mr. Miner remained there, not intending to engage in any business—remained there for a month and a half. Time weighed heavily on his hands because he had been an active business man. He was not used to idleness. His health improved somewhat here. He looked around for something to do, got into conversation with different persons, and it was thought by him as the result of his inquiries that he might do something in mail contracts. Well, now, Mr. Miner knew just about as much of mail contracts as Nicodemus did of the second birth; but the less a man knows about a thing the more earnest he is in pursuing it, because he sees only those men who are successful in it—who make considerable money at it—just as some of us know that those who invest in mines make money by it. Those we hear from; but those of us who lose money never say a word about it. Mr. Miner heard of those men who had made lots of money in mail contracts, but did not hear of those who lost money in them. Along in February he concluded, after investigating the business, that he would take a few contracts if he could get them. So he put in his bid. During that time, too, Mr. Joshua W. Watts was here, a son of the ex-Delegate from New Mexico. They talked over this thing. John W. Dorsey was here, and it was all talked over between them. One route was talked over and another route was talked over, and the thing was generally discussed between them, as to bidding upon mail-routes. That is substantially the way in which these different persons came together. Watts is not in this indictment. He figures in it, however, for about a year after the time that I am now speaking about.

The advertisements had gone out and the proposals must go in. As you must all know, parties who bid will make, say a thousand bids and perhaps get one contract in thirty or forty or fifty. The average is not one in fifty. Mr. Miner thought if he could get four or five contracts out West he could superintend them, ride around there and look after them, and his health would be improved. So he put in about one hundred and thirty or one hundred and forty bids. Mr. J. W. Dorsey put in one hundred and forty or one hundred and fifty bids, and Mr. Peck, the brother-in-law of Mr. Dorsey, whom Mr. Miner met six or seven years before and knew, put in one hundred and thirty or one hundred and forty or one hundred and fifty bids. All of them together put in some four hun-

dred and fifty or five hundred bids. To the amazement, almost confusion, of Mr. Miner, he secured of the one hundred and thirty or one hundred and forty bids that he put in some thirty contracts—I forget the exact number; but a five or six times greater number than was expected. The competition was not so large in that region of country as was anticipated. There were twelve or fifteen different bids for each route, and he secured perhaps thirty routes, or such a number—whatever the number is will come out in the testimony. Mr. Miner was accustomed to doing everything that he agreed to do. He did not know what it meant to put in a bid to do a thing and when that bid was accepted then not to do it. He had no idea of that. Confused and amazed at having so many proposals accepted he hardly knew what to do. Those proposals were accepted ranging over a territory of about eighteen hundred square miles. Mr. J. W. Dorsey got a good many contracts, too, under those proposals in the same territory, and Mr. Peck got a great many in the same territory, and Mr. Watts got a good many in portions of the same territory—about eighteen hundred miles in extent. Then it became a matter of attention with them “How shall we put these routes into operation? We have here an avalanche of them in a territory large in extent. How shall we do what we have agreed to do?” Miner insisted upon putting all his into operation in some way. Without large capital it is true, but having good security, he was anxious, as he was bound in honor under his bid, to do precisely what he had undertaken to do. He went to work at it most vigorously. It was found, for instance, that one party would have a route way up in Dakota, another way down in California. One had a route in New Mexico, and another up in Oregon. They got together at that time to parcel out the territory, so that they could the more conveniently carry those routes. The bids were for themselves exclusively, and they came together to parcel out the territory. Mr. Vaile up to this time had never been heard from, nor for months after this time was he ever heard from, nor had he ever known or spoken to a single one of these men whom I have mentioned; not one of them, except a casual acquaintance with Senator Dorsey, and only a casual one. But as to these contractors, he did not know them, and had never heard of them up to the time of the letting of the contracts. Now, these men being friends before, having met together before, having investigated these routes together before, came together to determine how they could best execute their contracts, although not as partners in any respect. The contracts were upon proposals made by them separately, the awards were made to them separately, and then they divided their territory. Mr. Miner had a power of attorney from Mr. Peck, who happened at that time to be sick in New Mexico, unable to attend to his business. Mr. Miner had, at that time, the confidence of Senator Dorsey. Subsequently the confidence was not quite so full and complete. Mr. Peck being sick, and Mr. Peck also having confidence in Mr. Miner, gave a power of attorney to Mr. Miner to execute his contracts. That was at the time the contracts were given. Now, they divided their territory. Excuse me if I refer to the map for a moment. I am going to hurry through this matter as rapidly as possible. The contracts extended from Kansas all through here [referring to map and indicating], and around this region of Southern California. It was agreed between the parties at that time that J. W. Dorsey should have those contracts that had been awarded to either one of the parties in Kansas, in Nebraska, and in Dakota; that territory as nearly together as possible. He took that territory to put into operation the award that had been made and

the contracts that were to be executed for either and all of the parties. He went there for the purpose of putting those routes into execution. J. W. Watts, belonging in New Mexico, took New Mexico, the southern half of Colorado, and Arizona. Miner, a business man, and representing Peck, who was sick in New Mexico at his home, and could not attend to business, took a larger extent of territory, assuming to put in operation the routes that he had in the territory that he had assumed and also the routes of Peck in the territory that Peck had assumed. So that Miner took the larger load upon his shoulders, embracing Northern Colorado, Utah, Nevada, California, Oregon, Washington Territory, Idaho, and Montana. That was the labor that Mr. Miner undertook to perform between the 15th of March, when the contracts were not finally executed—the contracts had to be made out, and it took some little time for the department to prepare them; and sureties had to be prepared also. So Mr. Miner had April, May, and June, to prepare for the contracts to begin on the 1st of July, for routes running over a region of country that in extent would amaze the most sanguine. It was an effort that would appall the most hardy; yet he went to work at it to do it. You will find in the course of the testimony in this case that Mr. Miner did do it. He provided for the running of every one of the routes in his territory at an amazing expense. He called upon his friends. He had contracts that he had undertaken to perform, and was under moral and legal obligations to perform, and he went to work and performed them with a will. I am only astonished at the hardihood of the man in attempting to do it, and so will you be—covering such a vast extent of territory as that—assuming his own proportion, and the proportion of the territory that would naturally fall to Mr. Peck. But he started from here early in April, went to his home in Sandusky City, where he had good security, got all the money that he could, and started out upon that enterprise; and when he started back for Washington City, which he reached on the 23d of July, he had let every one of the routes in his region of country; that is, he had made contracts with persons to carry the mail over every one of the routes; some at a considerable loss, some at a considerable gain. In the aggregate, to his great delight, on the 1st of July, he laid his head upon his pillow and was satisfied that he had made a profit in the enterprise notwithstanding the thousands of dollars of expenditure, because his contracts with carriers for the aggregate of the routes left him some profit. He came on to Washington. He heard on his way rumors that some of those parties with whom he had made contracts, had failed to put the routes into operation. Mr. Hutchinson, with whom he made contracts for eight routes, had utterly failed. On two routes in Nebraska there was an utter failure, and on two routes in Utah there was an utter failure. In that condition he found himself on his return here to Washington, which he reached on the 23d of July. He had done everything that mortal man could do. He had expended his money and expected to lose largely when he started out. Meeting with better fortune than he expected, he was able to say on the 1st of July that he had not lost money, but would in the course of four years make something, losing on some routes and making on others. But reaching the city, it was demonstrated to him that there were failures on many of his routes—some sixteen or eighteen—over the country. That put him in this position. Inexperienced as he was in the way of conducting mail contracts, he knew not what to do, and he sought at once General Brady, a day or two after he returned, it being the first time he had ever in his life seen him to speak to him. He stated to him his condition. But General Brady, in the multiplicity of his duties,

or in the arrogance of official position, put it just as you please, rebuffed him, and from that time never, until the present indictment, has Mr. Miner exchanged a word with Mr. Brady, nor has Mr. Brady exchanged a word with Mr. Miner, excepting on one single occasion, and that was about another matter. Mr. Miner from that time—and it is susceptible of absolute proof, more than three years before this indictment was found—was in such a frame of mind, of such feeling towards General Brady by reason of what he conceived his ill-treatment when he first asked that the time might be extended for him, that he has never had any business relations with him since, and has never spoken to him, one never recognizing the other from that time to this, except on one occasion, when it seemed almost absolutely necessary in another matter, and that more a social than a business necessity. Pretty conspirators!

Now, that is all susceptible of proof. What did Miner do? That brings Miner and Vaile together. I have said to you that long subsequent to the time that these contracts were given, Mr. Vaile had never heard of either of these parties except Senator Dorsey. Everybody has heard of him, of course. It seems that in these bids Mr. Miner had made proposals to carry the mail over two routes that Mr. Vaile wanted. After it was known who were the lowest bidders on these two routes, Mr. Vaile ascertained that Mr. Miner was the lowest bidder on two routes that he wanted. He had his stock for them and needed them. Mr. Vaile then inquired about Mr. Miner, and found that Mr. Miner was then in Sandusky, Ohio. He was at his home, where he had credit, making arrangements for putting his routes into operation. Mr. Vaile wrote to Mr. Miner and offered him \$100 apiece for these two routes. Mr. Miner, delighted to get rid of any of his routes, having so many on hand, accepted at once, and received a check for \$200 and he gave those routes to Mr. Vaile, and Mr. Vaile has run them ever since.

Now, that was their first connection together. Mr. Vaile had never heard of Miner prior to that time, had never met him prior to that time. When he found that Miner had two routes that he wanted, he proposed to pay him a certain amount and without any higgling; without any beating down. Mr. Miner accepted the offer of Mr. Vaile, and turned the routes over to him. That was all very pleasant as a business matter between them. It made Mr. Vaile feel pleasantly towards Mr. Miner and Mr. Vaile happening to be here on the last of July, when Mr. Miner returned under the circumstances I have stated, learning that some of his routes there had been failures——

Mr. MERRICK. [Interposing.] To what two routes do you refer?

Mr. VAILE. From Dodge City to Camp Supply and Camp Supply to Mohegan.

Mr. HINE. They are in Kansas.

Mr. VAILE. In Indian Territory.

Mr. HINE. Mr. Miner came back here under the financial distress I have mentioned to you and he sought Mr. Vaile and told him about his interview with Mr. Brady. After a very few questions Mr. Vaile said "Why, you seem to be able to put these routes in operation before new men can do it, and you ought to represent the case to General Brady. Why didn't you represent it to him, and you would have got an extension of time. Because it will take him a long time, several weeks at any rate, to let to other parties, and inasmuch as the failure is not your fault, but the fault of parties whom you had employed to carry our mail, he will give you time." Miner for some reason that is almost inexplicable refused to do that. He had been rebuffed once. Mr. Vaile then

volunteered to represent the case to Mr. Brady, having no trouble about it, arranged it in a three-minutes' conversation with Mr. Brady. Mr. Brady said: "I will extend the time till the 16th of August to have these routes put in operation." Miner went to work with a will at once, and sent a Mr. Moore out in that country for that purpose, but in a very few days word came back that Mr. Moore was not proceeding with that celerity that was required, and Mr. Miner was again in difficulty and trouble, and again sought Mr. Vaile. Mr. Vaile looked over the field again, and again suggested that the route should be put in operation; that he had some few that were paying, and some few that were not paying; that they were in a region of country inhospitable it is true, but in a region of country that would be developed and in time would be profitable, and urged upon him the necessity of carrying them forward, and for several days those consultations were going on Mr. Miner, in the mean time, offering all his contracts with all his profits, and offering to lose all the money that he had expended in putting them into operation up to that time—several thousand dollars—offering them to other contractors, to Mr. Saulsberry, one of the largest contractors in the country; to Mr. Sanderson, also one of the largest contractors in the country; to Mr. Brown, one of the large contractors of the country, if they would take these others off his hands. Offering to lose thousands of dollars, and to quit entirely if anybody would step in and take these contracts off his hands. Finding no one would do that, Mr. Vaile stepped in. Now, perhaps, it would be profitable for us to stop at this point and review the connection of Mr. Vaile with these mail contracts. We will talk a little while about Mr. Vaile. It is well, of course, for us to know something about these different men who have been doing these terrible things.

Mr. Vaile, I have told you, was a large contractor, and that is a fact. It is a fact that for twenty years and more he had been engaged in that business. It is a fact that in no year has he had less than one hundred different mail routes, running some comparatively short distances, others hundreds of miles for twenty years. And it is a fact, gentlemen, that may not be said of another man on earth in the mail service—I am not talking about any universe except universal mail service—that Mr. Vaile has never yet failed in a single contract he has made, in an experience of twenty years. When he took a contract he fulfilled it. Whether he made or lost, it was all the same. When he undertook to do a thing he did it. Now there is a record with the Government that no man can dispute. He always put his routes in operation. He had large deductions frequently, because it is utterly impossible to fulfill in all the details all the contracts. But he has never been declared a failing contractor—not once. Twenty years known in the departments and never the breath of suspicion against him—never. During all Congressional investigations, during all the troubles that we have had in reference to the postal service, during all the claims that speculators were abroad and combinations made between men to defraud the Government in the postal system, not a breath of suspicion against him, and it is reserved for these men now for the first time to brand Mr. Vaile as a conspirator. For ten years of his experience in the postal service he had personal supervision of all his routes taking care of them for himself. During the last eight or ten years he has had other business on hand which has engaged his attention and inwrapped him so that he has paid comparatively little attention to the details of the mail service for that period. Having a fine farm in Independence, probably as fine a farm as there

is in the universe, stocked with the finest head of cattle, with thousands of fruit trees, his farm is his pride. He worships it. He can hardly be dragged from it except he is dragged away by the force of law. Then the gentlemen who have known him for years, have done his business for years must have him, and it was the hardest work in the world to get him from that farm, from his stock, his vineyard, his orchard. His farm is his idol. And, excepting during the troubles incident to his assumption of certain duties under these contracts that kept him here for a time, which I will explain to you, he has not been in this city, excepting when he was compelled to come. He has had a partner in his mail contracts, a Mr. Williamson, for seventeen or eighteen years. He had confidence in him. He has confided to him during the eight or ten years last past all the details of the execution of those mail contracts, knowing nothing about them practically himself, doing nothing about them, and when letters or anything else came to him he passed them over either to Williamson, or, in the later contracts, to Miner. His attention was devoted to his farm which is his idol.

THE COURT. Mr. Hine, we cannot hear evidence on those subjects, and you are opening the case on the evidence you expect to produce. I cannot go into a history of Mr. Vaile's farming operations. The time of the court is too valuable, I think.

MR. HINE. I would be delighted, indeed, if they would confine these things to what is charged in the indictment.

THE COURT. They shall do it. Now, the court is not going to admit any improper evidence here, and everybody knows it.

MR. HINE. I know no improper testimony will be admitted, but we do not know what testimony will come. The court gives us the law. I have heard a two days' speech in which Mr. Bliss called my clients thieves. He said their antecedents would be shown, spoke of one of them as a disreputable man, and all that sort of thing. I simply want to show the character of the men whom I represent.

THE COURT. I do not know that that is a case in which general reputation can be given in evidence at all.

MR. HINE. May be not.

THE COURT. We cannot go into all these matters of a man's occupation upon a farm.

MR. HINE. I do not ask that.

THE COURT. You must come down to business principles in conducting this case. If you are to expatiate, one after another, opening the case in this way, I do not see that we will get through the opening of the case for a month.

MR. TOTTEN. Your honor, Mr. Bliss has certainly charged these gentlemen with being rascals and men who were defrauding the Government, and it is certainly proper in rebuttal for Mr. Hine to say and to prove that Mr. Vaile is an honest man; that he is a farmer by profession, and that he is devoted to his business——

THE COURT. [Interposing.] No; not at all. You know very well that that is not evidence.

MR. TOTTEN. Certainly, your honor, he could show his antecedents to show he was an honest man. He could show his character.

THE COURT. No; you cannot.

MR. TOTTEN. Oh, yes; you can.

MR. HINE. I may show under the present ruling of the court that Mr. Vaile was in such a condition that he could not have had anything to

to do with the conspiracy at all, and in showing that it is essential to show where Mr. Vaile was and what he was doing. That is all I am attempting to do, to show where he was and what he was doing during those years.

The COURT. You can prove an *alibi*.

Mr. TOTTEN. You will remember, your honor, that in the whisky cases tried at Saint Louis, a great many people, from the President down, were taken to prove General Babcock's reputation generally.

The COURT. But not to prove he was an honest man.

Mr. TOTTEN. To prove reputation was to prove he was an honest man.

The COURT. You cannot go into that.

Mr. TOTTEN. They proved there by the President of the United States that General Babcock's reputation for honesty was beyond question.

The COURT. Reputation is one thing; but this is entirely another.

Mr. TOTTEN. Well, this goes to make up the man's reputation.

The COURT. No; upon a question of reputation, there are but two questions to be asked, "Are you acquainted with the man's general reputation; if you are, what of it?" That is a very short kind of testimony.

Mr. TOTTEN. Then he would tell what kind of a reputation he had; that he was a citizen of Independence; was engaged in business there, and had led a blameless life; that would be the answer.

The COURT. No; that would not be an answer to the question. The question is, "What is his reputation amongst those who knew him?"

Mr. TOTTEN. The answer would be that it was good; that he was a farmer.

The COURT. Oh, no, no; not that he was a farmer at all.

Mr. HINE. I do not wish to trespass upon the patience of the court. I have been stating to the jury where Mr. Vaile was and what he was doing during the period of time that they allege in their indictment that he was here conspiring with some officer of the Government. Now, if I am not permitted to do that, if the court will kindly advise me, I will not trespass upon its patience, or attention, or time.

The COURT. I do not know what the Government is going to prove. They have charged a conspiracy on a certain date, but the date is not important. A conspiracy has to be made up by a thousand circumstances or less.

Mr. HINE. If they will advise me now, that they propose to confine that conspiracy to that time, then I will tell the jury where Mr. Vaile was during that time, and I will not go beyond it.

The COURT. It will be safe to say to the jury then that inasmuch as they have not informed you when this conspiracy was formed, you cannot meet their case. But we cannot go into an investigation into the occupation of Mr. Vaile or anybody else, except probably to prove that he was not here on a certain day. If they prove that he ought to have been or was here, you can prove an *alibi*.

Mr. HINE. I have stated to the jury that Mr. Vaile did not attend to the details of this work at all; that his old partner came into it, and I propose to show the jury how his old partner came into it.

The COURT. Came into what?

Mr. HINE. Into the execution of these contracts.

The COURT. What has that got to do with conspiracy?

Mr. HINE. I do not know; but if your honor will give me instructions how I shall defend my client under the arraignment that was made on two days of novel reading or speaking, I can tell your honor.

The COURT. Just follow the track that he opened, and if you overthrow his case then you get your client off.

Mr. CARPENTER. Then that will lead everywhere?

The COURT. I do not know that he said anything about your client.

Mr. HINE. I do not think he did, either, except he made no division when he called all of them thieves and perjurers.

The COURT. Well, that is not slander.

Mr. TOTTEN. It is said on nineteen different occasions in this indictment that Vaile and Miner were both rascals, and made fraudulent affidavits, and filed fraudulent petitions for the purpose of cheating the Government.

Mr. MERRICK. That is all right.

The COURT. Now, we are getting down to what is charged.

Mr. MERRICK. That is the fact. We state that.

The COURT. Meet the facts.

Mr. MERRICK. We do not know how many sheep he had, but know how many affidavits he filed.

The COURT. It may be very pleasant to spend time listening to these details about his farm: but we are trying a case, and a case must be tried on facts, and time is scarce.

Mr. HINE. Time was made for slaves.

The COURT. Time was made for freemen too.

Mr. HINE. Yes, that is it—made for freemen, but not for bondmen.

The COURT. When time is over we do not know what is going to happen to us.

Mr. HINE. I beg your honor's pardon, but as representing my two clients I have only asked for two hours to show that they are entitled to their freedom. They were allowed two days to show that they ought to be deprived of their freedom.

The COURT. Certainly two days were not spent on your client.

Mr. HINE. No, but they were intermixed with the others.

The COURT. Now, there are a half dozen gentlemen representing these eight defendants. Is each one to go over the ground on a two days opening? I cannot allow it.

Mr. TOTTEN. Excuse me. But the Constitution allows every man charged with crime the benefit of counsel learned in the law, and the Government by combining nine distinct individuals within two thousand miles of territory in one indictment cannot deprive one man from being heard by his counsel. Now, brother Hine's clients have a right to be heard by counsel.

The COURT. I will listen to brother Hine with pleasure; but the business of an opening is to tell the jury how you are going to overthrow a case that has been opened on the other side, and counsel must be confined to the facts which they expect to prove. Now, certainly, counsel for Vaile cannot expect to be allowed to prove his occupation of farming a thousand acres, and thousands of sheep, and orchards. That is all very agreeable indeed, but it does not reach the case which has been opened by the Government.

Mr. HINE. Excuse me. It was brother Merrick spoke of sheep. I spoke of cattle.

Mr. MERRICK. I thought you said sheep.

Mr. TOTTEN. Mr. Bliss said he would trace one of these defendants from the time of his boyhood in Vermont down.

The COURT. He cannot do that.

Mr. TOTTEN. Yes; but he said he would, and he called him a scrub, and a Vermont scrub too.

The COURT. I have heard of people being called worse—scamps.

Mr. TOTTEN. But this is worse than that. He called him a scrub.

The COURT. Certainly, I will not go into evidence on that subject.

Mr. TOTTEN. Brother Hine has a right to follow the opening of Mr. Bliss.

Mr. HINE. It is a bad example. Mr. Bliss spoke of contracts that Mr. Vaile had nothing to do with and not mentioned in the indictment. I know it was a very bad example. But we do not know the law yet. Your honor gives us that. So that in following Mr. Bliss we get outside of what would be legitimate proper testimony, perhaps.

The COURT. I can readily say that you can follow Mr. Bliss. Wherever he has pledged himself to prove any facts, you may follow him on all those facts and tell the jury how you are going to meet what he promises he will do. That is the business of an opening. Now, I certainly should not allow Mr. Bliss to expatiate on the character and employment of these defendants before they made this discovery. I do not think he did.

Mr. MERRICK. All that Mr. Bliss said about character was predicated of the allegations of the indictment and the proof he was going to educe of their having done these things.

Mr. TOTTEN. That is all brother Hine wants to do. He wants to counteract them.

The COURT. Mr. Hine is quite at liberty to go to that extent. But I must save a little time if I can.

Mr. HINE. I am not so very particular, your honor, because I shall close this case, and you will of course allow me such time as I shall be interesting or confine myself to the evidence introduced. I expect in the course of events to address the jury in behalf of one or more of these defendants, unless they get disgusted with me in the mean time, so that I shall have an opportunity to present all the evidence then.

The COURT. I do not wish to restrict you in the course of your opening.

Mr. HINE. I will abandon the course I had laid out.

The COURT. Certainly, what I have said is through no ill-feeling or disrespect for you, but you must remember that the time of the court and jury, and of all of us, is not unlimited.

Mr. HINE. I will proceed in order then. On Friday of last week, there was rehearsed to you one of the most remarkable novels of modern times, a novel having no substantial foundation in fact, and unlike all other novels that you have read or heard of in your life, either in ancient or modern times, containing suppression of proof instead of statements of facts. With that novel we have to deal. With that novel we propose to deal. And while the figures there are tolerably true figures, we will show you both before and since that, when taken alone and separated from the facts and surrounding circumstances, they will appear as curious. Now it took two days to rehearse that novel. It will take, perhaps, ten days or two weeks to put in the evidence that they have, and when that evidence comes in you will find that those figures, though apparently speaking in the language of truth, as dovetailed here in two days of effort, speak in the language of falsehood when taken in connection with surrounding circumstances. It may be that it was ignorance. If it was, then ignorance is bliss, and it is excusable. Otherwise it is not, because the records of all these things that were done, particularly so far as Mr. Vaile is concerned, and, I think, so far as Mr. Miner is concerned, show that they had little, if anything, to do with it.

I did not bring Mr. Vaile in, but I left off with Mr. Miner at a time when he was laboring under these struggles down to the 16th of August. The first connection that Mr. Vaile had with these contracts actually was by receiving a telegram when he was in Independence, where I tried to show you how comfortably he was situated, late in August, after the time had been extended to the 1st of September. It was the last of August when Mr. Vaile had gone to his home in Independence, receiving a telegram from Mr. Brady stating that Senator Mitchell, from Oregon, complained that the routes that he spoke of had not been put in operation, and asking Mr. Vaile if he would not put in operation the routes of Dorsey, the routes of Miner, the routes of Peck, and the routes of Watts. Mr. Vaile in two or three days answered that he would attempt to do it, and at once telegraphed to his partner, who was then in Indian Territory, to come to Independence, and after he reached there, they set to work at once to put the routes of all these parties, excepting Watts, in operation. They set to work at once upon a task that was Herculean and a task that you will say few men are equal to. That was done as well and as speedily as possible.

Now, I might stop here, because Mr. Wilson has gone, very rapidly, it is true, over these different routes. He has stated to you the circumstances under which the work was performed. He has spoken to you of the Tongue River and Bismarck routes. He has spoken to you of the other routes. On the Bismarck and Tongue River routes the men were killed. They were compelled there for months and months to place three or four men at each station, because one man would not stay there alone. They were compelled to send out on their line two and three men, because one man would not go alone. One or two had to spicket around and spook about to see where Indians were, and several of the men were killed on that line, and but for trespassing upon your time I would attempt to picture that route to you.

The next most signal instance that they give us was on the route from Saguache to Lake City in Colorado. At least an hour of time was spent upon it—a route that was given to my client. They say we got paid for double service, and got pay all around that we ought not to get. Why, that route had no more to do with Mr. Miner, as I suggested before, than Nicodemus had to do with the second birth. Miner turned over that route to Mr. Sanderson and never drew a dollar for it. Every dollar of that, as the records show, was paid to Sanderson, and not a dollar to Miner. They knew or ought to have known it. It is a suppression of the facts anyway; worse than the suggestion of a falsehood. It is a suppression of the facts when they talk about that route to kindly excuse Mr. Miner from any responsibility there, because they knew that never for an instant did he have the least management of the route. It was put in operation by Sanderson. If there were any increases, the increase was made to Sanderson. And every dollar that was paid there was paid to Sanderson, and you know it. [To counsel for Government.] There are other routes in almost the same position, and still in their anxiety here to do something for somebody, or against somebody, they spent an hour or two of time in trying to saddle that upon Miner.

Now, that is only one instance, and I do not know but I ought to leave this matter right here. These men have done the best they could. There has never been, as between Mr. Stephen W. Dorsey, or John W. Dorsey, and Mr. Vaile, one moment's conversation since April, 1879. Not one word. They got into a dispute that will be shown here in December following—J. W. Dorsey, and both of them for that matter,

and they have been probably as malignant enemies as two sensible men allow themselves to be, and, until brought together in this indictment, there never has been a transaction between them since. Miner, the old friend of Senator Dorsey, or Senator Dorsey, Miner's old friend, feeling exasperated because Miner sided in a dispute with Vaile, cut each other's acquaintance, and there has not been a word of intercourse between my client and either one of the Dorseys since that time. Their relation has been such that they would not meet directly or indirectly. Mr. Miner has never said a word to Mr. Brady until this indictment was brought up, and necessarily brought them together to some extent, since the last of July, 1878. Pretty conspirators they are! A nice set of men to combine together for the purpose of mutual advantage to draw something out of the Government, when such facts, proved and known, demonstrate the utter impossibility of their acting together in any of these enterprises. Quarrels arising between them that were so bitter and inveterate that not a single word passed between them from that time to the present. Why, originally, when Mr. Vaile agreed to take up these routes he had the drafts signed in blank for quarterly payments. On one occasion, by accident, Mr. Miner received, sent to him, one of the vouchers, and they will claim that there they came together. Not so. They never had any intercourse together. As early as March, 1879, or early in April, one or other of the parties separated absolutely and unqualifiedly. Mr. Vaile and Mr. Miner took certain routes and run them absolutely and alone, and have run them absolutely alone since that time. Mr. Dorsey—J. W. or S. W., I do not care which; they may take care of that—took the other routes and run them absolutely and alone, dividing the routes that were in dispute. J. W. Dorsey, in consequence of this territorial division, having certain routes that were given to Miner, and the department holding Miner responsible for all those routes that had been awarded to Miner. Mr. Watts had certain routes in his territory that belonged to Miner by reason of this geographical division of routes, and Mr. Miner was responsible for them. The Tongue River route was awarded to Mr. Miner. They first got into difficulty in separating territory. Then, when Mr. Vaile came into the case, another trouble came up as to the respective routes of the parties, but the department held the original contractor responsible for the execution of all the mail routes on the line. J. W. Dorsey had certain of the routes that were awarded to Miner, because they were in the territory that J. W. Dorsey had assumed to take care of for his own interests. Mr. Watts had one or two of the contracts that had been awarded to Mr. Miner, because in the division of the territory Mr. Watts had assumed to carry those contracts. Now, when Mr. Vaile assumed this responsibility he was compelled to take all the contracts that had been awarded to Mr. Miner, no matter what arrangement Miner had made with anybody else to carry them. So that Vaile found, when he got into this, that he was compelled to protect not only the routes on this territorial limit which Mr. Miner had taken, which included some contracts given to Peck, and some contracts given to J. W. Dorsey as well, but also in other places where Miner had taken contracts, so that it placed upon him the duty to carry out practically all those contracts. Because if Miner had been declared a failing contractor on any of those routes, it would have affected all his routes; they would have deducted from all his routes; and so long as he was on record there as a failing contractor, precisely so long would it be impossible for Mr. Vaile to draw any pay on any of his contracts, and in that way be tied up for six months or a year. So

that Mr. Vaile was compelled to shoulder, and did, with the aid of Miner, shoulder many of the contracts, because prior to his knowing that this geographical division marked out the line between Peck and J. W. Dorsey and Miner, he had assumed or promised to carry certain routes for Miner. He had undertaken then to carry some routes for Peck. He had undertaken to carry some routes for J. W. Dorsey. Having undertaken to carry some routes of all of them, he was compelled to carry the routes of all of them, because a failure in one was a failure in all. That is a very brief statement of it. I am afraid I do not make it very clear. I will finally, though not to-day perhaps.

Now, that was the position of things. That arrangement took effect practically on the 1st of April, 1879, and Vaile found himself in this position. He found that not only all the money that he had for the purpose of carrying on his enterprises was exhausted, but that he was in debt on the 1st of April between \$75,000 and \$80,000. He had \$40,000 in our Citizens' Bank up here for putting these routes in operation, which hung over him like the shirt of Nessus from that time down to December, 1880. That necessarily brought Mr. Vaile here from time to time to renew his notes, and of course to see to the security he had given them—these drafts on the Post-Office Department—and he was here during that time once in three months, and no oftener, and staid one or two weeks each time during that time. A man who struggled harder to extricate himself from a dilemma has not been found in this court-room for a long time. Still they say notwithstanding that that he is a conspirator. I am amazed, and worse than amazed.

I think I will leave these parties here. If I should attempt to go over these mail routes—and you have heard the story before from Mr. Wilson—it would be more than would be necessary. It was thought that I ought to go over all routes which are in this indictment with which Mr. Vaile and Mr. Miner were connected. Mr. Wilson has done that very well, though briefly. But he has said enough very likely to put you in possession of the main features in the case, and I only ask of you, gentlemen, that you will look at this thing as fair and candid men. Just look at the evidence as it comes along, one piece and another piece, and if any evidence comes up against one man do not charge it to another unless you see that that other was connected with it, because they have here the eight men indicted, whom they say are conspirators. We say we were not conspirators, and I am defending this case upon the hypothesis that my clients tell me the truth when they say they are not conspirators, so I am defending this case the same precisely as though Mr. Vaile and Mr. Miner were alone indicted. And when I see any evidence that I think by any possibility may reach them, I will attempt to take care of it. With any others I have nothing to do, because they are not my clients and I am not responsible for them. They will be protected by abler men than I. I will simply assume to take care of the men who are in this indictment who have retained me to do it. I shall take care of them upon the hypothesis that I have the same rights so far as they are concerned to defend them as though these other men were in a foreign country and not before the court. That right will be given me undoubtedly, and when I shall have performed it, if I shall have performed it well, I shall be entitled to that credit that all lawyers ought to have if they simply see to it that no harm comes to their clients that ought not to come to them.

Mr. TOTTEN. If the court please, Mr. McSweeny is to make the closing statement to the jury and he could not very well get through to-

day. He does not feel in a disposition to go on this afternoon and I would like to ask the indulgence of the court, if not asking too much, that Mr. McSweeny be allowed until to-morrow morning, when he will probably be able to shorten his remarks.

The COURT. I cannot make that precedent that we must meet a half hour later and adjourn a half an hour earlier. In old times, when we had a long case we would sit until sundown and sometimes sit with candles.

Mr. TOTTEN. In those times they used to consume three or four days in trying a replevin case about a cow. We do not do that now.

Mr. CARPENTER. Mr. McSweeny will occupy less time if we give him until morning.

The COURT. I know; that is always what is said.

Mr. CARPENTER. He could only speak thirty minutes now; as it wants that of the usual time of adjournment.

The COURT. He could speak an hour if he chose. I would rather sit an hour later than adjourn a half an hour earlier. I must get through with this case some time or other, and with the ground that is laid out before me I do not know that it can be done this summer. We must do every day the work of the day.

Mr. McSWEENEY. [Referring to hammering by workmen on the new court-house extension.] To proceed with that noise will be very annoying.

The COURT. We will have to do the best we can in trying the case with that noise. We cannot stop. That noise has continued ever since this case began. To-day is not the first time.

Mr. TOTTEN. It is the first time they have been pounding on iron bars.

Mr. MERRICK. In such a matter as this it is proper that I should make a single remark, subject, of course, to the views the court may have of what the public business requires. We, on our part, will be happy to extend any courtesy we can to Mr. McSweeny. I make that remark as due to myself.

The COURT. I have no doubt of that, but I think it is my business to fix that.

JOHN McSWEENEY, Esq.,

addressed the jury on behalf of the defendant, Stephen W. Dorsey.

With submission to the court and gentlemen of the jury: I do not wish you to understand from this pile of papers before you, or that from any request I made to the court for time, I wish to delay or weary yourselves or myself with any very long or extended statement. It would be doing a poor compliment to the able gentlemen who have gone before me to gain time, even if the court would permit it, to retell the story so well told, to—

Fight the battle o'er again,
And three times slay the slain.

I do not propose to do it. And as I appear here for Senator Dorsey, who is called in that way to distinguish from the continual repetition of initials, distinguishing him from J. W., I will, in the few remarks that I make now up to the hour of adjournment and a little perhaps in the morning, try to bring your minds to consider the position that he occupies in this case. I speak for him. The court will not perhaps interfere with my saying I speak for him. I speak for him not so much as an advocate, for there are around me here gentlemen of such prominence as require no such poor assistance as mine, from a

strange land. Senator Dorsey was my friend and I was his. We lived in neighboring counties. He was in Loraine County before the drum-beat was heard. He was of that district so long represented by Professor Monroe in this Congress, afterwards by your judicial brother, Judge Welker, now a resident of our town. So that I appear for Senator Dorsey and I wish to explain from the testimony as I understand it, just the position he occupies in this case, and when I get through and when the case gets through you will be called upon to say whether he deserved the epithets of "cheat," "Shylock," prodigal of others' blood and saving of his own; whether he will deserve to be branded as a conspirator to rob his country's Treasury, when his blood was spurted over his cannon to protect your city. Major Dorsey has been near Washington before. He was here early in 1864 when that other Early was a little late over on the hill.

They have heard of Dorsey before in this city when his cannon thundered and rumbled up Seventh street to sweeter music than the ladies of Washington ever heard in operatic strains from that day to this, because the thunder of that music meant safety for this Treasury over here that he is said now to be a conspiring thief to rob. But more of that anon, anon, sir.

Senator Dorsey, the Shylock! Senator Dorsey, in the language of Mr. Bliss, when describing his quarrel with Wilcox, was a fellow who cheated Wilcox as he cheated everybody he came across. It would be a bold, brave man that would go to Elyria and openly call a public meeting and utter that kind of language. If he escaped the broomsticks of the old women he would be lucky. Wherever this man was known it would not do to denounce him as cheating everybody he came across and cheating everybody who came across him. Well, after that, he took the balance out in Shylockism. I asked what that infernal thing so often repeated meant, and they told me that Shylock was a Jew that Shakspeare drew and there was something about his going for the heart's blood of other people and cutting out pounds of flesh, and all that sort of thing. That was stated to you by brother Bliss under the privilege given to him to speak of what he proposed to prove to the jury. Now, when he brings this Shylock witness I want to see him; for, of course, he would not say that except as the foundation, as the court says, of what he intends to prove. This Shylock, this cheat, this Treasury robber, is said to be Senator Dorsey. His history in connection with this case is somewhat like unto this: He gets into the United States Senate in a way that I will tell you of before I finally get through. He represents Arkansas, or the better western pronunciation is as we have learned from the old tune, *Arkansaw*. The tune is the "Arkansaw Traveler." Nobody pronounces it the "Arkansas" traveler. He was the Senator from *Arkansaw*. That is the way we understand it out West. He came here in 1873, and his official term was to end on March 4, 1879. It appears that General Brady was Second Assistant Postmaster-General. It appears that there were some lettings of contracts upon the star routes, premonitory, preliminary publications and notifications that there would be bids received. This was in, probably, December, and running on through January up to February, when, I believe, the lettings were to be. It was noised abroad by advertisements in order that the world might know that bids were wanted for these routes. I am told that the proof will show, and it is a little incident worthy of being proved, that for these routes there were in the aggregate over eighty thousand bids, not bidders, but bids. In these matters the experienced parties get together and bid for contracts.

They learned it, studied the processes, looked over the maps and reduced it to a science from their own experience, clubbed together with their capital, and by their competition benefited the Government, by giving good bonds and competing with each other for that which might make them a little profit. Well, these bids were invited. Nobody is considered a thief to start with, *prima facie*, because he makes a bid on a Government contract; although I thought for a few hours the other day that it was rather *prima facie* against my client, because he came at the proposition of the Government and put in a bid. It had a look here for awhile as if the very circumstance was one that would have to be explained. I do not think it will, though, to intelligent gentlemen. Now, these bids were made singly and in combination as well. In nine cases out of ten the parties bid for more than they ever intend personally to carry out and actually superintend—these large bidders. They intend to subcontract and sublet, and do the best they can with them, and see if they cannot make some profit out of the subcontractor. They have the responsibility, and they give the bonds; they parcel the work out to the subcontractors, and make the best bargain they can. And here let me remark that for many hours it was urged against these defendants that they made money by their subcontracts. There was an appeal made to your honor, as if you should sit here as a court of equity, with evenly balanced scales, and see just how much a subcontractor ought to have had, and how much should have gone to the contractor. Gentlemen, you are not here to try the question whether A B made much or little out of C D on a subcontract. Just remember that. Now, when these parties put in their bids, Senator Dorsey was in the Senate from Arkansas. Let us see who Peck was, who Miner was, and who John W. Dorsey was. John W. Dorsey was a brother of the Senator. Mr. Miner was a gentleman whom Mr. Hine has already described. He is a resident of Sandusky, Erie County, right above us there, and next to Loraine, an honored, industrious, and enterprising citizen of that town. Mr. Peck was a gentleman from Arkansas. He has been spoken of here flippantly and lightly as if he was some mere go-between or man of straw. Mr. Peck was a reputable, high-minded gentleman of that country. He was a colonel in the army, he followed its fortunes, and lost his health in the contest on his side of the struggle. He was a man of some means, but came out of the war with broken health, on the pathway to the grave where we are all bound, but his time was up, marching by stages that he could count. He was the brother-in-law of the Senator. Senator Dorsey married a little girl up in Loraine County, of a family that I knew and know perfectly well, the daughter of the man with whom the Senator came to live when a boy 16 years of age, going to school at Oberlin and working with his now wife's father for his board. The Senator had left Vermont which, as my old friend Steve Douglas said, is the best State in the world—to leave. The next thing you can do, if you have not the good luck to be born in Ohio is, when you arrive at years of indiscretion, to get out there as quick as you can. So Senator Dorsey landed in Ohio, at Oberlin. I say of Oberlin as Paul said of his place, Oberlin, "no mean city." He married his wife there. On going to Arkansas he took his wife's sister with him. There Mr. Peck formed her acquaintance and married her. Hence Senator Dorsey and brother Peck married two Loraine County girls. That is their relationship. Mr. Miner was a friend of Mr. Dorsey's. He was Mr. Dorsey's next door neighbor in Sandusky. I will tell you more of Mr. Dorsey in this connection; some time after the war he did not stay in Loraine, but

went up to Sandusky where Mr. Miner lived and became the manager of the Erie Tool Company, one of the most prosperous and useful works in all Ohio. He became its manager and controller and staid there, I may here say, from 1865, at the close of the war, until 1868, when, by a vote of which he knew nothing he was elected to the presidency of an Arkansas railroad.

Mr. MERRICK. I dislike very much to interrupt anybody who is so pleasant and entertaining——

The COURT. [Interposing.] I wish now I had allowed Mr. Hine to describe the orchard.

Mr. HINE. I assure your honor I had gotten through describing the orchard, and had gotten along to the sheep; and Mr. Merrick did not even interrupt me.

Mr. MCSWEENEY. When he got to the orchard it was in blossom. I believe it would have borne fruit if you had let him go on. Now, I will make this brief——

Mr. MERRICK. [Interposing.] Now, your honor——

The COURT. Mr. Merrick, please do not interrupt.

Mr. MCSWEENEY. There! The judge has come to judgment at last upon you.

Mr. MERRICK. It is so entertaining I will not press the objection.

Mr. MCSWEENEY. Now, Mr. Merrick, there is some of the blarney stone about you yet.

Mr. MERRICK. There is so much of it about you that I hate to stop you.

Mr. MCSWEENEY. I do not know how it is to other people but to a common man like myself it appears that when there was a lot of conspirators, Shylocks, thieves, and robbers, that we ought to know a little about their antecedents so that from them we can judge of their consequences. You notice that brother Bliss made a point of the familiarity between Miner and Senator Dorsey. He described him, in one instance, as an old partner of his. It is not true. In 1868 Senator Dorsey was called, by a unanimous vote, out to Arkansas to take charge of a railroad. He went out there and became a useful citizen—useful in peace as he was valorous in war. He made their wilderness to blossom like the rose. He had not been there but five years when, Republican as he was, a legislature composed of one hundred and seven members, forty-eight Democrats and the balance not Democrats, gave him almost a unanimous vote. He received forty-five good solid Democratic votes—the balance Republican—this scallawag and scabby carpet-bagger that had sneaked in there and tried to beat them!

Mr. MERRICK. And he took his carpet-bag and came here.

Mr. MCSWEENEY. So that brother Dorsey represented the Republicans and Democrats. Now, is there any objection to that? Men do not suddenly fall. They do not suddenly become cheaters of everybody and robbers and thieves. Vice is gradual. It comes along by easy stages. Men do not suddenly fall. "*Facilis descensus avernus.*" "Easy is the road to hell, but you start gradually." Out of respect to brother Ingersoll, I will translate it, "*facilis descensus averni*"—strike out the hell. [Laughter.] Now, Mr. Dorsey, and Mr. Miner, and Mr. Peck were here. And Senator Dorsey who performed acts of friendship toward his friends has them brought forward now as evidence that he was a conspirator. It should be placed upon another ground, and a different interpretation; it was because of his good heart. Peck, broken in battle, with weakened lungs, trying to do something for his family, came on here and said, "Brother Stephen (for they were as brothers), you have had some experience. I believe if I can get Miner

to take charge of my contracts for me, I can make something by the operation." Mr. Peck had often visited up there in Sandusky, and had become acquainted with Mr. Miner and John W. Dorsey. They had talked it over. Said he, "Brother Stephen, we have a notion to go in for some contracts. There is some big bidding going on here." Says Stephen W. Dorsey, "Brothers don't do it." We expect to prove that as a competent fact against this idea of conspiracy. Says he, "Don't do it, boys. There are more perils in the confounded thing than it is worth. From what I have heard the contractors say of this thing, of the capital it takes to build stations in the far West, and of these perpetual struggles with the red skinned foe, it will not pay you. Then, too, look at your health." "Well, that is just it," says Peck. "I have got brains. I have been through the thing. Now, if I can get somebody with the physique, I believe I have got mentality enough. I believe I have got genius enough to manage this thing so I can make something for ourselves and our families." Says Steve, "I tell you don't do it." They consulted further, and they said they saw their way, and they would make some bids. "Well," says Steve, "if this is the game, I won't desert you; what do you want?" "We want your recommendation. We have got to give bonds for the contracts. The bids are accepted." Steve Dorsey never deserted a friend. Right here, when they speak of his interest in these men, I have a right to show that there was a man by the name of Adams (if I have his name right), a Democrat on the other side of the political household; but a friend for whom Dorsey went around the streets of Washington among his friends and got bonds for contracts of one hundred and odd thousand dollars; that Postmaster-General Key, against the protests of Brady, so strong as to amount to a quarrel, increased to nearly a quarter of a million of dollars, compared with which these contracts of ours are as a wart to Ossa; as drops in the bucket to the ocean; that against Brady's protest he increased it to nearly a quarter of a million of dollars; yet, nobody, as I will show you, ever claimed that Stephen W. Dorsey, because he went out and pledged his personal word to a friend and got him bail, nobody supposed, nor did Stephen W. Dorsey, that even in this unregenerate world; even in this cold, mundane sphere, where it has passed into a proverb that friendship is but a name; that the exercise of an act of friendship would ever be turned into evidence of a conspiracy, or furnish the basis of calling him a rascal. He said to Peck, "If it is a small amount I will help you. I know your career in battle. I know where the shot and shell went through you. I know your history. I helped to rear after I was married the little girl that is your wife. I will not desert you. But I tell you you had better not go in. There is nothing in it. Still if you say so, command me. I will do all that may become a man in order—in affection, anything; for your wife and child are as my wife and child. And you, my old brother, although I do not think you ought to go into this thing, still, if under Peck's management, and mind, and genius, you can do the physical work, it may succeed." To Miner, a good business man, he said, "If you think by this you can do anything, God prosper you, and I will stand by you."

With these scattered remarks I have, under great embarrassment, occupied the time.

The COURT. I do not know as the court has made anything by requiring you to speak.

Mr. MERRICK. We have had a very entertaining time.

At this point (3 o'clock p. m.) the court adjourned until to-morrow morning at 10 o'clock.

THURSDAY, JUNE 8, 1882.

The court met at 10 o'clock a. m.

Counsel for the Government and for the defendants being present.

The COURT. Before the counsel proceeds with his opening to the jury I want to say one word upon another matter. My attention has been called within the last day or two to certain articles which have appeared in the papers of this District and of the city of New York in regard to certain jurymen in this case, especially the talesmen. These articles appear to me to do great injustice to the marshal as well as to the jury. Ten of the jury were selected from the regular panel. The court then ordered four talesmen to be summoned, and only two of them were called to the jury. The first of these two was Mr. Hugh T. Murray. He was interrogated as to his qualifications as a juror, and after he had answered the interrogatories put to him by counsel on both sides, the district attorney rose in his seat and declared that he was not disqualified as both parties accepted him. Now, when the United States, through its own counsel, states in the presence of the court that a juror is accepted, I think that the juror ought not to be assailed by writers for these papers who deal in vague reports, and who draw inferences which have no foundation in fact whatever. I do not know this gentleman personally, but he was regularly summoned, passed an examination as to his qualifications, and the district attorney of the United States declared that he was accepted as a juror. He was accepted on the other side also. I have not myself any doubt but that this jurymen will perform his duties as he has sworn to perform them according to the best of his judgment and according to his conscience. It is cruel injustice on the part of the writers for the papers to assail a jurymen who has been regularly selected without knowing any facts upon which to base their charges. I have seen so much injustice done to jurors and to litigants and to courts who are engaged in the administration of justice that I feel called upon on this occasion to declare that these charges, in my opinion, are without foundation; and if I am to be convinced it will be hereafter, that there is any good ground for suspicion in regard to any member of this jury. These flying rumors, although they may be disregarded by experienced men, are calculated to do great harm. There is a law which subjects parties to punishment for libel in consequence of articles published, the effect of which is to obstruct the administration of justice; and I do think that it will be the duty of the district attorney to call the attention of the grand jury to some of these newspaper articles and see whether we cannot have justice administered fairly, according to the law, in the regular way, through the judicial tribunals of the country, without having jurors disparaged and misrepresented upon mere conjecture and fancy. I trust that the jurors in this case will see the propriety of guarding their own consciences while the cause is pending, so that they shall not subject themselves to good grounds of suspicion or even to the appearance of improper conduct on their part. I shall only lose faith in the jury when I am driven to it by something more than newspaper articles.

Gentlemen of the jury you see the delicacy and responsibility of your position. Do not allow any person to approach you or to tamper with you or to suggest their own view or make any intimation whatever, whether such persons may be connected with the trial of this cause or whether they may appear to be unconnected. You do not know what motives may influence suggestions that may be made to you or any of

you from persons outside. Keep your own counsel, follow your own judgments and consciences, and keep yourselves uncontaminated by the world outside.

JOHN McSWEENEY, Esq.,

resumed his opening address on behalf of the defendants, Stephen W. Dorsey and John W. Dorsey, as follows:

With submission to the court, and gentlemen of the jury: I have every desire this morning to get through with the statement I have to make for Senator Dorsey, and the court will kindly bear with me, because it is all the opening that we claim to be individualized for the defendants as they stand now, it being agreed that the incidental remarks that I make concerning Senator Dorsey will dispose of John W. Dorsey, and there will be no multiplication of other appearances for defendants before you. I shall try to be brief, not feeling much in talking mood. I would be very glad if this duty had been spared me and been assigned to others upon our side more competent. But as it is, I will resume my remarks.

I was proceeding yesterday afternoon to speak and had got as far as the description of how these parties came together, of the relations existing between Senator Dorsey, Miner, John W. Dorsey, and Peck. I seek not to repeat or travel over that ground again. Wherein these parties proceeded, how they went to work, the difficulties encountered, the danger of becoming declared failing contractors, the disposition of a portion of this territory after its allotment to Mr. Sander-son, the arrival of Mr. Vaile on the scene, the interview between him and Miner, Miner's rebuff by General Brady when asking for more time to put the service on, the intervention of Mr. Vaile in his behalf, all that I am exceedingly obliged to my friend Hine for placing so fully before you. He has explained matters and incidents that were unknown to me, and I will adopt them as part of the statement which reflects upon the question of whether Senator Dorsey was a criminal conspirator; such for instance as the incident given you by Mr. Hine, which will be in evidence—for all these statements of fact as bear upon the question are presumed to be put in evidence—that Miner went when July approached, and asked General Brady for further extension and received that kind of attention which has been described to you. Mr. Vaile, an older contractor, more familiar with the department and better able to present arguments to obtain favor, to let the contractor have some breathing time, suggested, as Mr. Hine said, a course to get more time; but he did not even then as it appears approach Mr. Brady. All these little circumstances, straws, are important when you come to the question of a criminal conspiracy. It is important to know how parties place themselves when they are going to commit their fate, fortune, and destiny into the hands of others. By these approaches we are enabled to understand fully and finally the utter absurdity of the charge that these parties stood in the relation of criminal combiners or conspirators towards each other.

Now, let us travel on. As I said before, and I will simply repeat it, to take up the thread of my discourse and resume it, when Senator Dorsey had told his brother and his brother-in-law, Colonel Peck, and these other parties, that he did not approve of their project or scheme, but that if they were determined he would do all that was honorable to help them, to assist them in getting their bonds, and do all that incidental work of which I will not now speak—it will be given you in evi-

dence—Senator Dorsey did nothing then, he is prepared to aver, but what he would do again; not by way of bravado, but simply because he did nothing wrong and nothing dishonorable. That is all he did, as I said to you before; and more for others than for himself. He assisted in procuring for large contractors and bidders important bonds which threw them into the market to compete. Brother Bliss said that this matter was brought before the American Congress, and they passed it over; and he said that he would lift a corner of the curtain and would let you peep in there and see why the committees of the American Congress passed things over. That was innuendo. I might state to you, without attempting to read at all, that I have in my hand a book giving the testimony of Senator Dorsey on these same matters, before a committee of Congress. I will not attempt now to read it; but as allusion was made to it by our friend upon the other side, I will say that Senator Dorsey, along in 1878, when the question came up whether these were good bonds, or whether they were intended as bogus, to let Vaile escape—when the matter was investigated we expect to show you in evidence that Senator Dorsey, instead of shrinking away, had waited while public calumny, through these same newspapers of which we have heard this morning, was toying and trifling with his name, and instead of being summoned or subpoenaed he went and rapped at the door of the national committee and said, “Sirs, I have been waiting these many days expecting, in common fairness, that you would ask me, under oath, to say something about these allegations. You have not sent for me, but I have come, and am here. Swear me.” And he told the story that is in that book, and said, “Gentlemen, anything more you want of me I will tell you.” From that day to this no committee, no investigation ever said, “Senator, come; there is this or that point that was left unexplained.” Brother Bliss has said, to break the force of this, “I will, before we get through, lift a corner, just a little corner, of the curtain.” I say to the Government show-keepers, Ring up the whole curtain and commence the show! Ring up! And if behind that curtain or in those scenes you find Senator Dorsey in any dark or dubious position, bring it out. Don’t stop at the corner of the curtain. Up with it. On with your Government wax-works.

Now, sirs, along about that time these things were done by Senator Dorsey, as every Congressman and Senator from the West did matters of that kind, for his constituents. This great mail service was being put on, routes had been established by Congress, and he served himself best even in a political point of view and in an honorable point of view, who could go out to his western constituents and say, not that he got ten cents more on cut nails or a tariff upon a pound of cotton, but “I come to you with the glad tidings of great joy. More mail facilities: more expedition; better facilities for communication with the great East.” These were things that employed the attention of Congressmen and Senators. Their tables were covered with applications. They would recommend this or that man. “Yes; I know this man to be a gentleman. I know this man to be a postmaster. I know this; I know that. Is there anything I can do for you in the department?” Who ever heard of that being a questionable act that would give the least imputation of guilt. I would look upon it as a sad day in the history of the republic if I could not go freely through an open door to the desk, to the residence, day or night, of the representative that attends to my interests in the great American Congress. Now, Senator Dorsey did things that will be in evidence, which were perfectly honorable and that you have asked your Congressmen or your friends in Congress to

do for you, and which they would be derelict in duty if they failed to do for you upon the proper occasions.

So we go. These bids were made, the contracts were awarded in the manner described by brother Hine, and many of these men took more contracts than they expected to put upon the roads themselves. They expected to subcontract and get along in a manner indicated by brothers Wilson and Hine, of which now you are thoroughly posted.

Now, what next? We are now past the February awards of contract in 1878. Let us see: Miner, Peck, and John W. Dorsey had some contracts awarded to them in the names of Miner, Peck, and John W. Dorsey. The difficulties in putting this service upon the roads led Mr. Miner to consult with Mr. Sanderson, and as has been told you from the very origin of the contracts, long before the service was put on, he made over to Sanderson for the full amount of the award, subcontracts for many of these routes, to save himself from being declared a failing contractor and being put out of the department practically. Now, these gentlemen know that Mr. Sanderson from the very start, before any service was put on at all, was the subcontractor for the full award, for the full amount of many of these contracts. That means this, as I understand it; the department forbids the assignment of a contract. I cannot go and assign to you as I can a lease. If an assignment in full were recognized by them that would involve the relief of the original bidders and the responsibility of their bondsmen. They are not going to follow anybody and recognize assignments so as to interfere with the original contracts. But, under the operations of Mr. Brady's reform, which has been already described to you in a communication to Congress, a communication that does his head and heart honor, the subcontractors off in those western wilds, thousands of miles away, who were often swindled by the big contractors, were protected. Previously after doing the service, being shot at, risking their lives and all, they sometimes did not get their pay; and under his administration it was suggested that there be this: A subcontract. If the subcontract mentioned the amount, that subcontract being placed on file would be the protection of the subcontractors. If it was for the full amount he would draw the whole of it. For illustration, I have a \$10,000 contract and I am going to subcontract it to you, but I am only going to let you have \$5,000 of it. As I understand, the subcontract will be from me to you for \$5,000. I am going to hold on to the \$5,000 and you are going to do the service for the other \$5,000. That would be a notice, as I understand, for that amount. But, if I am going to let you have it out and out, as in the case of Sanderson, if I want you to take it off my hands and let me out of it, I have got to go through the form of subcontract, and then it would read as a subcontract from me to you for the full amount of the award. Thereupon you would go and draw all your pay. It is what we call, out West, equivalent to a mechanic's lien. I suppose you have the same thing here—that the lien of the mechanic for labor upon the building, and for material for it, is thereby, by a short cut, secured—and this subcontract being on file is equivalent to a mechanic's lien. It overrides and overtops every other claim. This is important when I come in the progress of the proceedings to the case of brother Vaile. Now in this state of things these parties transferred some of their contracts to Mr. Sanderson, some valuable contracts that figured very largely, too, along in the early part of 1878 before the 1st of July. As I gather this, and I speak generally, Senator Dorsey was soon called upon by Mr. Miner on some occasions and by John W. Dorsey, his brother, and by Colonel

Peck, his brother-in-law, to make them some loans or advances to meet these difficulties which the Senator had foreseen, and of which he had kindly warned them when he advised them that there was nothing in this bidding and in these contracts. So it commenced, and without going into particulars of day and date, along early in 1878, after February, after the lettings and awards, he found he had advanced in various ways—and the whole financial matter will be brought before you—about \$10,000. They then came to him for more, and he then loaned to Mr. Miner, or helped him to raise some money in this way: he went upon a note in what is called the German Bank, known as the German Bank note. Mr. Miner anticipated the earnings and drew some post-office drafts or warrants which will be given to you, and you will then understand them. They were attached or pinned to this note and thrown into the bank as a sort of collateral. Now, up to and before July, 1878, when the service should have gone on, Senator Dorsey had by moneys and advances and notes in the bank become liable and paid for these parties, his brother-in-law, brother, &c., about \$16,000. Well, Senator Dorsey never saw one of these contracts up to that time. He could have no more described what they had than you could. Now, we come to his departure from Washington. He goes down to New Mexico where he had cattle ranches and business that took him there, extensive interests, perhaps something in mining. I know cattle ranches. I will not now, like brother Hine, attempt to describe the orchard, and be cut down as he was in full bloom before the fruitage, and I shall spare the attempt at a description of the cattle. I would like to go into it, but I am sure I would be short-horned by the court before I got through. I will simply then say that he had interests down there which called him. That is enough for that.

Now, mark you, Senator Dorsey is a conspirator according to the charge of the Government. They gave these preliminary matters over which I am traveling, and brother Bliss said he would, by slow and gradual approaches, come to the full culmination of these Treasury robbers. Very well. Now, at this time, Senator Dorsey had no knowledge of what was done with Mr. Vaile or Mr. Miner. He had no knowledge of the particulars of what Sanderson got; not at all. He went off about his business. But, as they would come to him for money, he would say to them, "Brothers, is it not coming out as I warned you? Brother Peck, my brother-in-law, is it not coming out as I warned you, when you thought that to benefit your health and to prolong your life, and save something for your family, you would take some contracts, as you have done before? Did I not reluctantly, as thwarting your wishes, warn you I thought there was nothing in it? Now you are coming for \$10,000 and \$5,000 and \$1,000. Boys, you see how it is. I don't want to reproach you. As you say you live in hope that you will get the service on and then see the bright future. I am not going to desert you. I will not do that." Steve Dorsey never deserted a friend; but he goes on about his business and leaves things just in that way. Now, in July, 1878, what happened? Mr. Vaile, as Mr. Hine has well told you, and has told you with great accuracy, had obtained some of these contracts. They had intruded upon a couple of routes he wanted, being an old contractor, and he made arrangements with Mr. Miner, who had a power of attorney from John W. Dorsey and Mr. Peck. So that it resulted in an arrangement like this: in August, 1878, while Senator Dorsey was thousands of miles away, Mr. Vaile, Mr. Miner, with his powers of attorney, Mr. Peck, and Mr. John W. Dorsey, sat down and entered into

a contract, the original of which is in my hand, dated August 16, 1878, which will be given in evidence—Senator Dorsey, as I have told you, being in New Mexico—by which these gentlemen, Vaile, Miner, John M. Peck, J. W. Dorsey apportioned and separated their various interests in the contracts that these parties had not already disposed of to Sanderson, in which John W. Dorsey and Mr. Peck retained three-tenths of the routes left. But Mr. Vaile as Mr. Hine told you, being a man of large means and resources, although they were severely taxed, had been going on and assisting in putting this service into execution until, as his attorney, Mr. Hine, told you, he began to see an overshadowing debt of \$80,000 for providing stations, men, horses, and all the machinery necessary to carry on this vast service. You see it is no trifle. Will you also reflect right here that by a law of Congress and by the regulations of the department, every man who signs a mail contract does it with the express reservation permitted by him that the Government may curtail, annihilate, and take off any of the service at any time it sees proper; a peril incident to no other business that I am acquainted with. These are the risks that are run, and they are important in looking at this very question. He may lose all but a month of his year's pay, for he agrees, in the contract, that he will take as full compensation, without a murmur, barring himself from ever going into court, and does it with his eyes open, whatever the Government may choose to allow. He can simply take one little month's pay as full compensation if his service is cut off. Although I may have a contract of \$100,000 running four years, and which might get up to half a million in the contract term, which may justify me in putting on a hundred thousand dollars' worth of preparation in building stations, preparing to carry along forges to shoe the horses, and all that sort of thing, it may turn out that they will become worthless on my hands. I may lose the \$100,000, or \$20,000, or any other sum or outfit. If I was to have \$36,000 a year, \$3,000 a month, they might say, "You don't get that \$36,000. We will give you one month's pay, which will be \$3,000. If you have spent \$20,000 or \$30,000 you get none of that; you have signed that kind of a contract to grin and bear it;" and so that is what they have to do. Mr. Vaile had all these contingencies upon him. I want to show, when they talk about Mr. Vaile being a conspirator in connection with Dorsey, that Vaile could not conspire with Dorsey unless Dorsey conspired with Vaile. You recollect the description of how Daniel went into the lions' den, and how Daniel looked at the lions and the lions looked at Daniel. There have got to be two to conspire. One man cannot do it alone. Now, I am speaking of the conspiring brother Vaile. Vaile is conspiring with Senator Dorsey, is he? Why, they haven't met yet. The Senator is off abroad in New Mexico. He has advanced his \$16,000 or so to his friends, and said, "Boys, do the best you can; rush around, and do just as well as you can. Get out of it, or get into it, as you please; I have other fish to fry." Mr. Vaile then goes and makes this contract. It is provided that the advance made by brother Dorsey to John W. Dorsey, Miner, and these others, as far as they have gone, shall in the future be sacredly paid. All that have made advances shall have their interest protected and provided for out of any contracts that may be had; and then they divide the three-tenths, &c., the particulars of which will all be laid before you. This contract is a genuine document. There it is. Now, mark you, brother Vaile had had all these contingencies over him. Mr. Hine has described the indebtedness that he had incurred. Says Mr. Vaile, "Not only do I want this contract showing the division of

these routes, and all that; but look here, even your three-tenths which are reserved to you, as I am doing the advancing on my credit, that is, raising this \$80,000." He says to John W. Dorsey, Miner, &c.—he and Miner afterwards formed a business relation which was all right—says he. "Gentlemen, I will tell you what. As a prudent business man, I demand not only these routes which are secured to me absolutely, but I want a subcontract on these routes which you retain. Why? Because it is my money and my contract. I want to place a subcontract upon the department books so that I can command the situation. I have the debts to pay; they look to me; it is no more than fair. As a prudent business man, I demand that you subcontract to me." Now, as I have said before, that subcontract is a short-hand notice to all the world that that money is coming to them. I want to show you just how Senator Dorsey found things when he came from the West. Thereupon these matters were all recited to him August 16, 1878. Now, Senator Dorsey did not come back, I believe—I cannot be entirely accurate upon the date; but I will speak generally—until about the time Congress began to gather itself together, in December. Then he goes around and says, "Well, boys, how are you getting along? How is this?" He finds at the bank where he has deposited notes Miner's anticipatory drafts upon earnings as collateral; goes up there and finds that the subcontract that Mr. Vaile had got veiled all the rights that he had there to those drafts. A conspiracy, mind you; that the said Vaile and the said Steve Dorsey were terrible conspirators. That produces at their first meeting some friction. Senator Dorsey found that he had no legal right to interfere with what they were doing; that they had, in spite of him, made all these contracts. He goes up there and finds that this subcontract has cut off the application of these drafts; and I believe that misfortunes never come alone; that the bank went by the board and lost deposits there, and that there were disasters sufficiently thick around them. They say misfortunes never come alone, but in battalion, and there was a battalion up there again.

Now, I say that there was some friction between Vaile and Mr. Dorsey at that time. Well, matters go along. We are approaching now 1879. Then there is a kind of arrangement in proof. I think the exact day appeared to be April 6, 1879. They get together. I do not know whether they were all here, or not. This is in effect the result. Peck's health was failing more and more. I think that even in the month of April, if I mistake not, Senator Dorsey was called by express to what he supposed was his dying bed. Am I right about that? in April, 1878.

Mr. INGERSOLL. Eighteen hundred and seventy-nine.

Mr. MCSWEENEY. Eighteen hundred and seventy-nine, I mean. He was called to see him out in the West. John W. Dorsey was unfit to manage these things without the controlling head and mind of Peck, and the Senator said in effect, "Gentlemen, it has come just as I supposed, only more so; just as I said. I wish you had taken my advice. You are not fit for this business. I have just come from the dying bed, as I suppose, of a brother-in-law. There will soon be a widow and a child to provide for. Now, look here, you get together, get at your share of these contracts; you have spent your time and your money, all that you have, and you have run the credit of your friends. There is some \$8,000 over here in bank. I want that provided for in any arrangement that may be made. Now I will give your \$8,000 or \$9,000, or whatever it is, to John W. Dorsey. You have spent your years, your time, your money. If there is anything, here it is. I will pay it

and buy you out. I will give my sister-in-law a sum of money that will be exactly mentioned"—a contract that has been faithfully kept to the soldier's widow. Now here was the position of Senator Dorsey. Senator Dorsey saw no redress for the time and money his brother-in-law had put in, and no recoupment for himself, unless he would take some interest in this matter from that time forward; either that, or John W. would be whistled down the wind with all his time and money gone, and Peck be left a prey to ill-fortune, to die in poverty and in debt. Now, says the Senator, I will tell you how you folks are to fix this. Three-tenths of these routes are coming to you." This was the mutual agreement between these folks, and with Vaile. My friend Mr. Bliss described this as a horrible scene of some combining rascals. He says that these rascals, after running along defrauding the Government up to a certain time, then came like thieves and cast lots as though for the garments of the republic. What a comment as to a transaction that is just as plain as I am giving it to you now. These are the lots that were cast. The routes are taken apart belonging to John W. and to Peck. Miner and Mr. Vaile go together. Now, says the Senator, Peck is dead, and John is in a condition that never was contemplated; this could not go on unless Peck's master hand and mind was there to direct it, he being an old contractor. "Now, I will do this. God knows I don't want these scraggy contracts. I am up to my eyes in business. I have interests that call me thousands on thousands of miles away. I have ranches; I have mining interests; I have in charge the interests of others in vast affairs who confide in me, and I never expected to be running these little scraggy stage routes." But here it is. Going back was no worse than going forward. All that could be done was to go on, to remunerate himself, to compensate himself, forgetting these men that had spent their years and their money in this contract. An Irishman would understand me if I would tell him that the only way for Senator Dorsey to get out was to go in. Therefore, he went in to get out. He says, "You want to settle it?" "Yes." Some thirty-two contracts fall to the share of John W. and Mr. Peck, and so forth. An arrangement is made there about the debts, all of which will be given to you in evidence. That bank was to be seen to. Now what does the Senator do? We are combiners, are we? We are up to April now. We are charged in the indictment with, on the 23d of May, 1879, combining, confederating, and conspiring, by means set forth in the indictment, to cheat and defraud the Government. I have brought you down to April the 6th. Is there any confederacy yet? The Government does not even dare, with its throat of brass, to say so. So we have got to hunt later for a conspiracy. Then what? A separation of the property, each running its separate course, is a curious preparation for the combination. Combining means two together at least. And we are separated. Now what is the Senator to do? Does he say, "Vaile, let us cheat?" Vaile and he hadn't any love for each other, as brother Hine has said, and he has said it well. He says that they were just as disagreeable toward each other as two gentlemen ought to be in social life without getting perfectly outrageous. They had not agreed from the time of that subcontract interfering with the draft that was to protect the loan that was made to Miner, and as Mr. Hine has well said, Mr. Miner goes off with Mr. Vaile. They afterwards carry on business together, and that alienated Senator Dorsey from his old Sandusky friend, Mr. Miner. Peck passes out to his grave, and John W. Dorsey passes out and has never drawn a dol-

lar, notwithstanding these thundering falsehoods at the conclusion of this overture, for the overture commences on page 25 and rings on until page 75, in which they say when \$75,000 were drawn, it was for John W. Dorsey's mutual benefit with somebody else, and Miner with somebody else, and somebody else with somebody else. Just listen a moment, for it has a bearing upon this question. Now, mark it. I have shown you how these parties parted, and as you get along on these pages you find that thereupon Vaile put in a false affidavit away long in October, 1879, by which to obtain moneys for the mutual benefit and gain of Miner and Peck and Steve Dorsey and Vaile and Montfort Rerdell and Tom Brady and Bill Turner, &c. And thereupon again, Mr. Vaile put in another for more thousands of dollars for the mutual benefit of Senator Dorsey and John Dorsey and Miner and Peck, &c. And again and again he puts in some more. Vaile and Peck put in and get the third quarter of 1879 on route 46000 for some thousand or two dollars. Again, on the third quarter of 1879, for the mutual benefit and spoils of John Dorsey and Peck and Senator Dorsey and Rerdell, and all the brethren around the board for more and more thousands, and when Mr. Vaile takes the stand I am going to say, "Mr. Vaile, where in God's name is our share; shell over here, for we are short." They talk about addition, division, and silence. To us it has been subtraction and abstraction and distraction from any means that we had in starting in. And so on for quantity, and a large quantity, until the Government printing press ran out and the overture closed—lies Munchausen-like in monstrosity, before which Munchausen stories paled their ineffectual fires, grow as a mountain and just as palpable; that from that time on Vaile just took his contract to go along and present them to the department, to come over and divide with us the thousands and the thousands on these contracts on which they parted company April 6, 1879. When they prove it, may I be there to see.

Sam Carey when he used to stump (and Sam was a good stumper; that I offer to prove in evidence), used to say after fixing up the greenbacks, and so forth, that the proportion in France was so much and in Germany so much, and if properly distributed in this country, when he was out at Worcester, it was \$9.50. "Each of our shares is \$9.50." And Sam would always turn comically and say in every crowd "I have tried to look around and ask who has got my \$9.50, my share." And in this manner we shall watch closely, as Mr. Vaile and these other almoners have been distributing for our benefit, who has got our share. Now, look out for it, the moment our share is developed I want it.

We parted company then as I told you April 6th, 1879. Now then, you would think that this would be a strange place for a combination, the disposition and division of the property. Mr. Vaile cared nothing about Senator Dorsey. They have not even such friendly relations as would be justified in an ordinary partnership business relation, in an honest transaction, and it requires friendship and confidence in each other to form the close relation of partnership, for there is nothing between men so close. If any man has been in partnership with another for years let him ask himself if there is anything so close and binding on earth as the mutual knowledge of each other's financial affairs and their struggle together in the confidence of partnership. And yet they have not even that. But it is charged that Senator Dorsey and Vaile formed such an affection for each other that they would go into the business of rascality. And Mr. Dorsey, the Senator, does not know Vaile except through some friction in the transaction that I have been mentioning, and yet he rushes into his arms like in the stage piece called the "Long-lost-Brother:"

“Vaile, you are the man I have long sought, have always sought. I have found you at last; come to my arms, Vaile, I am a rascal.” And as they say out West in letters, “I hope these few lines will find you in the same state of health.” “Give us your hand”—a combined duplicate of rascality. Here we are. And yet a man is to let himself down to a stranger, and that stranger, such as it would not be safe, I think, for Dorsey or me, or anybody else, to step up to and say, “Vaile, I am a rascal, how is it with yourself?” I would expect to stretch six feet of Irish on the floor before him. That is what I would expect. And yet they ask you to believe that this gradual approach to conspiracy. Ah, says brother Bliss, it is by these little circumstances it is to be proved. “We do not expect to prove that Vaile and these parties sat down and made a contract in writing, but it is by these little approaches,” still so gently o’er us stealing, that the conspiracy will be proved—“one by one the little straws will pile up. Just wait until we get in all the circumstances.” Then he stood and looked you two minutes by Shrewsbury time. Circumstances! But, says he, “More of that hereafter.” Well, now, here is the hereafter [exhibiting manuscript of Mr. Bliss’s speech]. Here are your circumstances. That means somebody standing around. Here stands circumstances—Vaile standing around. There he is, circum. Now, in the language of Sam Weller, he will “circumwent,” and stand around here. That is the circumstances standing around, and Vaile is one of the circumstances.

On April 6, 1879, you have these parties separated. “I will go this way in life, and you that, and you that.” Your honor will tell this jury, and it is simply to illustrate that they may apply it, that if these parties separated each upon his own pathway, I presume of total depravity and absolute damnable unsalvation rascality, what boots it, if there be no conspiracy. The world is wide before them where to choose, and if from April 6, 1879, this dark pathway is for this one to follow and that one for that, though the overt act of one might be picking the lock of the Treasury, robbing and spoiling, what boots it? Overt acts are simply illustrative of and give character to the conspiracy, and your honor will tell the jury at last, “Gentlemen, if these men part to meet no more in confederation, and never did meet in criminal confederation, as they branch out each for themselves the conspiracy ceases. It does not have any weight for consideration before you.” I want you to understand, I want you to be prepared now, that if Vaile had gone out and drawn a fraudulent order—I am talking about if he did it in pursuance of a conspiracy between John W. Dorsey and Peck, the dying soldier, and Senator Dorsey, in whose absence all these arrangements had been made about these contracts when he was far off in the West and the Southwest. I am trying the question of conspiracy, and I will repeat it until the echoes are tired, if there is such a thing as an echo getting out of wind. I am trying the question whether these men are guilty of a conspiracy.

We have got along until April 6. They do not say there is a conspiracy yet. You have been told by the gentlemen, and it is proper in proof as testing the good faith of this transaction, that it has been once put in March and another time in April, and now it is put on the 23d of May, 1879. ‘Seventy-nine and three make eighty-two—23d, 24th, and the game would be up by a day. The statute of limitations is three years. The indictment, I believe, was returned on the 22d.

Mr. TOTTEX. On the 20th.

Mr. MCSWEENEY. The 20th; thank you. Time is precious. April

won't do any more, for the three years in the statute of limitations would have buried it in its grave. So that it is March, April, May—it is a movable feast, and these feasts are calculated from the last full moon, and in the condition of the moon, as it was full. I don't mean the Government; I mean the moon. At the time of drawing the indictments they were regulated in their indictments to fix these feasts, and the last one was May 23, 1879. There is a curiosity about that, and thereby hangs a tail, and let it hang for the present.

Now, we have got to April 6, 1879. What next? Senator Dorsey you think would turn into a conspirator to run this thing. What does he do? We will show you that he has a friend over here, Mr. Bosler, a gentleman whom I am told lives at Carlisle, four hours ride from here. He will be here. He was an old Government contractor, though not a mail contractor, and had dealt in hundreds of thousands of dollars and dealt honorably with the Government, a man of means and wealth and vast experience. Senator Dorsey said, "Now, if I can get somebody to take charge of this stuff and let me off to my business, I will give anybody that will do it, who is fit, one-half. Let him see if he can work me out of this." He sends to Bosler. He is not charged with conspiracy. Bosler is his old friend. He used to stop at his house when Dorsey was Senator, and there is no crime in friendship necessarily. Dorsey says, "What will you do about it?" Bosler says, "I will run these mails, and try to get you out of it; I can do it; just you attend to it a quarter or so along in the year, and I will take charge of it and relieve you." Now, Dorsey says, "There is this much to be provided for—I am out so much. Now, you will have some advances to make; if there is anything made out of the thing take your advances out, take mine out, and after that, Bosler, just take half for your compensation, and turn me over the other half, if there is anything in it; and, if there is not, that is all there is of it." But there was a complete separation between Senator Dorsey and all the parties, and then came the intervention of Bosler, against whom I guess this Government will not insinuate the charge of thief or robber. I guess they won't; nor perjurer, nor swindler. Now, then, right here we will produce the books for all the money that we got on these thirty-three routes that were turned over. We will, contrary to the requisitions of law, prove our innocence. It is the converse of the proposition that we shall be quiet and let them prove our guilt. We won't stand that. We do not want to get out with any smirched garments, nor the smell of smoke upon them.

Something was said by brother Bliss about our books; that certain books were about to be produced once, and that we interfered in some way, or something of that kind. We will show you in evidence that every book we have, large volumes, are opened to inspection with this condition, and see now if it is dishonorable or unjustifiable. Mr. Dorsey has books in which he has business dealings; for instance, some mining matters with friends—there is no secret about it, no counterfeiting in it, nothing dishonorable, but he has business matters which will be a breach of trust under the guise of producing his books in another suit, or in a suit not concerning those matters, to expose to the public. But to make a clean sheet of it, I propose, with the authority of my client, to say to my old friend, brother Merrick, to my new friend, Mr. Ker, whose acquaintanceship I shall reckon among the pleasant incidents of my first trip to the East—I shall say to these honored gentlemen "Retire and take our books, and on the honor of gentlemen, as you will do, look at every item that you say is pertinent to this case,

take your short-hand reporter, transcript it and bring it and throw it in evidence to that jury. There is not a thing to conceal." But these gentlemen may take them to their chambers with only the honor that attaches to the chivalry of the profession, all that a lawyer ever asks of a brother lawyer, with everything that is said about it, look at anything that is pertinent, excavate, bring out, short-hand, and produce it to this jury.

The soldier is not free. He has done nothing in this matter worthy of stripes over which he asks the veil of even a shadowy concealment. There is no place of alteration, there is no line marked, it is proper to say, except probably an interlineation common to any man's business. I do not know that there is that, but throw that in. Now, Mr. Bosler takes that property. We know Vaile no more. Sometimes the way of putting it stronger is, that we have never spoken to him since. No matter. We have never had any business connection with him since. He went his way, and we went ours. You know by this time that some of these contracts were Vaile's, some Peck's, some Miner's, some subcontracted to one, and some to another. In other words, you have heard these explanations about how matters are managed in the department. You will understand that there is no mystery about it. At first it appeared very mysterious. When it came to me first, it appeared so to me. I said, "Peck appears to be a subcontractor, S. W. Dorsey appears to be a subcontractor, how is this." "Why, my brother, sit down," and I sat there and received explanations. "S. W. Dorsey, did he get a subcontract; did he go to running a mail out there?" "Yes." Apparently on the books Stephen W. Dorsey will appear as a subcontractor of a little stage route. How else would he get the control of the contract? And so this one appears as a subcontractor, and that one appears as a subcontractor here in this division. Miner, Peck, Vaile, Sanderson, or whoever it was, were intermixed and interchanged, and so forth. You are not going to try anybody on shadows, and I will tell you the substance is this, that since April, 1879—the 6th, I believe, subject, of course, to correction—there never was a transaction, a division of profits, or a transaction upon the subject between Miner, Peck, Vaile, Brady, and Stephen W. Dorsey. Stephen W. Dorsey would appoint an agent, and as he would be away, what would he do? Why, if I would go into his office and be his clerk, and he would be going off thousands of miles, and he wanted to see that the money was going around and to be distributed, he would say, "Mac, I want to subcontract you to see that it goes right," and if I was in his office I would be his subcontractor. Why? Because it would be recognized up in the department, and I could go up there and draw the money, and see that it goes to the parties really in interest. All that will be explained as we pass along. Remember I am on subcontracts.

Now, we get down to April, 1879, and I might stop there. I am told that up to the time of John W. Dorsey leaving there was no increase of service or expedition. I do not know or care how that is. I know that Stephen W. Dorsey knew no more than the dead up to April, 1879, in this fearful drawing of lots that brother Bliss has spoken of as evidence of guilt, that I adduce as the evidence of the most perfect innocence. He never knew what he had, and where it was, or how it was. Mr. Dorsey, the Senator, now prepares to leave, and in 1879, on the 19th of May, goes off to Arkansas, to Little Rock, I believe. I had a paper—a chart showing the service of the others at that time. Mr. S. W. Dorsey was at Little Rock along from the 19th. J. W. Dorsey was at Sacramento, three thousand miles away. Peck was at Chico

Springs, New Mexico, some two thousand miles away. Miner was in Bismarck, two thousand miles away. Vaile was in Missouri, twelve or fifteen hundred miles away. And thus they were on the famous 23rd of May. The court says, "You may prove an *alibi*." I first proved an *alibi* of any interest whatever, and now these very parties are separated thousands of miles. Brother Wilson has said that this conspiracy must have been made at long range. I take another view of it and another figure. Conspiring is being together. Now, it would make those fellows perspire a good deal to conspire and breathe together across the continent. That is a literal comment, "let us breathe together." Now, they say it is secret. "Give me your breath, although it be laden with fraud." They say that these things are not public, and hence the origin of the word that when they conspired they breathed together. And they were these distances over which the perfumed breath of their fraud must be wafted in order to conspire. It would be a perspiring transaction.

Now, then, they say a day is not material. No; a day is as a thousand years to this Government in fixing this allegation of the time of conspiracy. They do not care a snap. What are days to them? Days are lying around here loose, and their day's man is getting dazed as to which day he shall take. And nights—and what are nights to them—a night in June, in which Byron says there is the most deviltry abroad? Now, where is your conspiring? We are in May, according to the testimony. Could there be a conspiracy to rob this little, helpless Government? And, Tom Brady, where were you? Ah, where were you? With whom were you breathing? Whose breath formed the electric chain of rascality that bound you together by "such stuff as dreams are made of?" And hence we thought a good opening statement would be what might be called a good open and shut one. They might as well shut up shop on the attempt to prove conspiracy with facts like those before them.

I am glad—now brother Vaile must not misunderstand me; I do not intend to speak against him—but, sir, I am really glad that he is brought in; that is, to see how we get along. I am glad that as honest a man as Vaile is brought up here to illustrate the perfect absurdity of this affair. They could not well leave him out. They could not if they wanted to. Even with the venom of hell against Dorsey and Brady they could not twist and rub Vaile out. He is a necessary component part of the conspiracy. He must breathe right in this indictment, and I say to brother Vaile, as we had to have a time of it, I am very glad we are having it in such good company. I do not think he looks much like a conspirator, and yet he is the principal actor in the division of these contracts. He and Miner were there and I ask them to point to a dollar, or one poor cent that brother Bliss talked so piteously about; says he, they might have left us one cent. No, we won't even leave you a cent upon this trade. I deny that the evidence will show that ever from that day to this he had a word of talk with these alleged fellow conspirators. "Steve, how are you getting along; who will we rob next; what is the next plan?" Never a word. "Steve, here is the division." Then Vaile was going along performing his contract.

Mr. Senator Dorsey left this part of the country, as I was going on to say when I was interrupted and taken off by another line of thought. He went off in May, 1879, and along in December, 1879, the proof will show, without ever having been in the department in Washington, he comes back to New York; his mining interests, this ranch, and other

interests necessitating the opening of a public office in the city of New York, where his copartners were up to their eyes in lawful and legitimate business unconnected with the mail contracts or anything of the kind. He never was in this city then, until in 1880, along towards the summer or fall, and then he came purely on a political mission. I believe, if I recollect right, that Mr. Dorsey was a Republican. I believe, Mr. Merrick, he was not on our side.

Mr. MERRICK. Were you on their side?

Mr. MCSWEENY. Not by a large majority. He was here, as he had a right to be, purely upon a partisan issue, which did not take him to the Post-Office, nor put a little mail contract in his head. He was here as a freeman, attending to that portion of his party's interests which he had a right in a republic of freemen to see to. And that is the only visit from 1879 up to 1880 of this conspirator. The next advent was on the night of the 3d of March, preparatory to witnessing the inauguration of his friend, and my old neighbor, General Garfield, as President of the United States. That is the history of this man from April 6, which must include the time, for if they go beyond the 23d they are out of their statute of limitations, and along there is the history of this man who is said to have conspired with somebody to cheat, defraud, and rob the Treasury of the country for which he shed his blood. That is all there is of it, or can be of it.

Curious things occurred in this matter. Mr. Sanderson's name is not mentioned in this indictment in that connection. Mr. Sanderson, who took that contract before the service was put on at all down there, is mentioned in the old indictment here by the initial letters of his Christian name. They had him lettered as they do your streets here—H. F. Sanderson, or something of that kind. He dropped out. They erected a little arch for Sanderson to crawl through on the other side. And just think of it, when they were finding indictments they never yet, although he is in Saint Louis, found out his Christian name. Isn't it strange. "We want some expedition on some of these routes. We cannot reach Sanderson, of course," the Government say, "to get his full name in the indictment here." I suppose they have exhausted and run down all the wires and used up all the mail-routes and they cannot find Sanderson's Christian name. Now, sometimes I think he was not Christian enough to have a Christian name, and escaped on that ground. And then I get to indulging in disjunctive conjunctions.

Mr. MERRICK. Do you expect to prove that?

Mr. MCSWEENY. Yes; as to whether he had a Christian name?

Mr. MERRICK. I call your attention to it.

Mr. MCSWEENY. I say he is left out of this indictment, and I say it is open to remark, for, as brother Bliss says, it is by little circumstances that you determine the faith of this transaction.

Mr. MERRICK. If my brother takes issue with the propriety of my quiet suggestion, I call your honor's attention to the fact that I have refrained from interrupting, although he has transcended the limits of an opening.

The COURT. I think the omission of Sanderson appears in the pleadings. It is not outside——

Mr. MERRICK. It is not outside of an argument. It is outside of an opening, for he does not propose to prove anything.

The COURT. I think it is within the limit.

Mr. MCSWEENY. I do not wish to transcend. You will notice I have run on an even key pretty close to the line. Now, I do not know what

is the reason that Sanderson was not indicted, and it is said that when ignorance is bliss it is folly to be wise. So that I pass on.

Now, then, gentlemen, I say that I might stop right there. But in order to impugn the character of Mr. Dorsey, they say that there are certain things that he did. I have already said that for the sake of the argument I am wholly and perfectly indifferent as to what each on his separate pathway did after that. Let me here remark lest I forget it. Brother Bliss has said, "We expect to show by the circumstances that these conspirators acted continually in concert, drew vast sums from the Treasury and divided in shares the money thus obtained." In another place he says, "The shares are sometimes more and sometimes less distinct." Now, gentlemen, here with all the responsibility that the statement attaches to it, I say that the proof will show you that down to 1880 and 1881, as far as I feel authorized to speak, later, in January, 1881, I know nothing about the returns, but along in 1879, and along down in 1880, up to 1881, to speak generally without turning to my notes of dates, instead of Dorsey becoming rich and rolling in wealth from the ill-gotten gains of mail contracts, as has been charged abroad and bruited on the civil wings of the irreclaimable leaves of the press, once gone never to be recalled, instead of these foul calumnies of having been enriched hundreds and thousands and millions, I will prove to you that down to 1881 the account of Senator Dorsey stood \$12,600 poorer than when he touched one of these confounded things. Now mark it—\$12,600 short, and we will show it. I want you and the world beyond these walls legitimately to know that we were out \$12,600, and that Bosler, an honest, good, true man was doing the best he could in his management. The contracts will be out in July, 1882. In the latter part or end he may find that he has had a slight profit. Now that is the condition of Senator Dorsey. Whether he will or not, I do not know, but up to the time that I speak of I will show you. Does not that amaze you? Is not that amazing to you after this roaring in the index, these loud-mouthed charges that Dorsey had rolled in golden splendors, the product of frauds upon the country's Treasury, he being described as rolling in chariots, purchased, as intimated by brother Bliss, with the sweat of the people robbed of their taxes that Dorsey might live upon the plunder. Can you not imagine that a sensitive man, a high-toned man like Dorsey, would be eager for the fray and long for the time of his deliverance before a jury, and the removal of such foul aspersions which weigh him down with the sense of ingratitude; don't you think that he is glad to meet you here at last to make his vindication.

Gentlemen, they got some thirty-two routes. I say routes. Down here I believe it is fashionable to say *roots*, and brother Totten, who was raised in Worcester right next to me, I caught the other day saying *ither*. Now, I am not going into that, I am not going to say *ither*, and *nither* am I going to say *roots*, and I want to call brother Totten to account for that very thing. Now, we got some routes. Mind you we got them in April, 1879. Let us look a little how they stood. A friend has drawn them off for me. I cannot carry these numbers in my head, and if I should happen to glance my eye from them to [Mr. Merrick] you will not care about it?

Mr. MERRICK. Oh, no.

Mr. MCSWEENEY. Now, the service from Rawlins to White River, about which a great deal has been said, was increased from \$1,700 in money one trip, and it took to make this trip by the original schedule one hundred and eight hours, up to three trips expedition forty-

five hours and the increased pay was \$13,706. That was all ordered, expedited, and increased, and the order issued May 12, 1879, for that route. Gentlemen, you will please remember, as I am told that these orders, the decisions, really precede May 12 by a couple of weeks—ten days to two or three weeks. The papers had been examined, the affidavits and all that, and the decision made; so that May 12th that service had been expedited, increased, and determined upon without any knowledge, connivance, machinery, or anything else upon the part of Senator Dorsey. Now, that Rawlins to White River route, figuring \$13,000 increase from \$2,000, I want to show and check off that we had nothing at all to do with. The papers on file in the department will show that it was in progress long before. Notes were drawn by John W. Dorsey and Peck before we ever knew that he had anything to do with it. So much for Rawlins and White River, what next? That is one of the big increases, \$13,000.

Now, we come to the route from Garland to Parrott City, No. 31145, \$2,745 original money; original number of trips, one; original schedule, seven days; number of trips increased, none; and that is carried out in ciphers, so that there is no change. Then it is afterward changed from original schedule eighty-four hours, number of trips put up from one to three, expedition down to fifty hours, and the increased pay \$31,343. That has the same line of remark apply to it that I did to the Rawlins and White River route. The order issues May 12, 1879. Two trips were added, and the time was reduced to fifty hours, and the total amount paid was some \$37,000 in gross. The original sum deducted from that would show the increase. So that there are on two of these comparatively little routes large increases with which he had nothing to do any more than you had.

Again. Pass down to 40104, the Pioche route. Where is that? In Nevada?

Mr. WILSON. In Nevada.

Mr. MCSWEENEY. Where is Mineral Park?

Mr. KER. In Arizona Territory.

Mr. MCSWEENEY. From Mineral Park to Pioche there was an increase. Original amount, \$2,982; original trip, one; original schedule, eighty-four hours; number of trips increased to three; expedition schedule, as eighty-four to sixty; increased pay, \$3,000 in round numbers, as against \$23,000 in round numbers—January 16, 1879. That was before April, so that all the affidavits, all the petitions, all the machinery, all the supplication for that route was done, as January is before April, before we ever came in or touched it, or had anything to do with it and knew no more than you did, till by lot it was assigned to us as one of the thirty-two routes. And these three that I have mentioned have formed the subject of comment by the hour, by my esteemed friend who opened here, as part of the circumstances to show the rascality and the combination of S. W. Dorsey. And they were all increased, expedited, fixed up just as they were when by lot, what any one would have got was unknown to each, this came out to him, and yet that is paraded here by the day as if a jury would never break through this form and charge it up against him as evidence of combination and conspiracy, an attempt to defraud the Treasury.

A little further about this route. Now, this Mineral Park and Pioche route is a route that was turned over and subcontracted to one Jennings. We hear a good deal about a Jennings' claim. Now, mark it. January 16, 1879, it was expedited and fixed up—time shortened, service increased eighty-four to sixty. Senator Dorsey and Bosler inno-

cently paid to Jennings the expedited compensation and the increased service. They paid it along during January, 1879, till, perhaps, along in 1880, a year and a half. I will show you in the evidence how it came out. We paid to Jennings, out of our pocket, expedition and service under this route, with which we had nothing to do, so far as expedition is concerned, as I have already said.

Now, let me show you a little of conspirator Brady's conduct towards us. Let us see how brother Catiline treated us. With these vast interests in his hands he determined, in addition to a reform that he had made about subcontracts, to know, out in these wilds, whether this expedition was faithfully lived up to, and he invented the "detective way-bill," you might as well call it as anything else, and he sent it out to postmasters, and says he, "You see when that Pioche or that Mineral Park fellow comes in, and write it down, and when he leaves write it down. Do the same at the next post-office, and transmit these things to me." He detected that Jennings, in fraud of Dorsey, had been charging and getting his pay with faithful regularity for the expedited and increased service. And Tom Brady, honest Tom Brady—notwithstanding all the slang spewed upon him, and all the vile epithets for which the best part of the English language has long been exhausted of words to be applied to him, and new books ordered—I say honest Tom Brady, regardless of friend or foe, recouped from us—I suppose that is a figure got from a chicken coop—twenty-eight thousand solid golden dollars; took it from us, although we had paid Jennings; and when that route would not pay, when this route 40104 fell short he came on other routes, and recouped and cooped until he had cooped up enough to make it even. He not only took from us that which we had, but, scripture-like, took from us even that which we seemed to have, or, the better translation is, which we had not. He cleaned us out on No. 40113, and when the quarters were not enough without other coops he reached into those and wrung the necks off of our contracts until he cleaned us out of \$28,000, this brother conspirator of ours. We came here with all the arguments that we could to try and explain this thing. We said we had paid it out honestly to this Jennings; claimed in one sense that he had not full notice; that it was expedited; that it was done before our day, and then we hunted up the documents and showed that he had full notice, and the telegrams we tried to show to the department to get it back. We have tried from that day to this to get them to restore to us that \$28,000 so taken from us. You begin to see a little of the other side of this story. Is it not true that one story sounds well enough until another is told? Has it not proved so in this case. The prosecution poured out denunciations without stint and made this route loom up as an important evidence of our villainy.

Again, here is route No. 41109, from Toquerville to Adairville, Utah Territory, \$1,168, sixty hours, &c. Three thousand five hundred and four dollars increased from \$1,168. That was done July 1, 1878, at the very time the service went into operation. As July is before April, so in that proportion do we know nothing of what happened to that route. That is one that was turned over. So another: Redding to Alturas, California; raised from \$5,000 to \$35,928; done in December, 1878. As December is before April, so is Dorsey's knowledge to the matter. Nothing could he have known of that, nor did he know, and no manipulation did he have in connection with it. He knew nothing about it, and it would be supererogation to say he did, and to multiply words

upon that subject would be to darken counsel and make unplain what is literally easy to be understood. That is a great one, Redding to Alturas, from \$5,000—I pass the speed and other details and take simply the amounts—to \$35,000, December 16, 1878. Now then the other little nubbins of contracts along there, four or five that were increased in his day are—

Trifles light as air.

They are trash comparatively; and with the whole of them, as I told you, the expeditions, the reductions, the eternal fines, do not amount to much. This statute of the United States is bristling all over with fines and penalties. You tread upon them, you run against them, they press you back, your expedition taken off, your profits deducted and swept from you. Like Jonah's gourd, these things grow up in a night, and in the morning a man's wealth may be off in the misty air. So, with all these risks, he, as I told you, was \$12,600, up to 1880, out of pocket, and it would have been better for him if he had never entered into any connection with mail routes at all. And yet, on this page of the indictment, if you will read it, you will see that, for the benefit of these parties, millions appear to have been drawn. For the benefit of S. W. Dorsey! Awake to these outrageous charges, gentlemen! Give me your attention, your thought, your intellect, while you read the repetition of these infamous calumnies set forth in the indictment.

Now, what else. Why, they say that the route from Eugene City to Bridge Creek is a transaction that has a dark look. I will not repeat and re-repeat my philosophy of the conspiracy. You, as sensible gentlemen, will not ask me to repeat every word. I am now discussing it upon the doctrine that they are not going to find even a dirty thing against Dorsey. I have passed the conspiracy point. The gates are shut and barred. There was no conspiring, and you know it, if anything of our statement is true.

Now I quote again from brother Bliss. Says he, "There was a Wilcox in connection with the Eugene City and Bridge Creek route which runs east and west up here in Oregon. I will not take the maps and weary or worry you with them. I have looked at the maps and had the brethren explain the matter to me. This route drains an immense mail territory. It is the only passage-way across the Cascade Mountains. It is one worthy of your observation in getting at the history of the grandeur of the mail service of this great Government. I ask your attention to it when you go to your jury-room, or as you shall observe it further along in the history of this case. This route they say was raised some and they tell us this: That we wrote out there to one Wilcox, and that we told him to go along the route, to get petitioners with reference to that route, to advertise, to secure the interest of governors, Congressmen, &c., who would naturally know the interests of their country and whose names would tell. They would have more avoirdupois, being in official positions out there than a hundred others, and I do not know why that should not be. They say he said to them, "Now, in getting up your petitions don't have them uniform. Don't put them in the same handwriting. Don't have stereotyped forms of expression. Don't do that. Have your petitions headed by various hands. Pass them all along the line. Interest the public; and send the petitions on here." They say that he said "If you can get them send them on by car-loads." That he wrote Mr. Wilcox so. Now, there is nothing in that that should make a well developed avoirdupois man tremble I think. I should have remarked some time ago that you

cannot put upon the stand a contractor—and they are as honest men, as worthy men as work for the Government—but what will tell you that in addition to these contingencies of being ruined of which I have spoken they do take into account *per contra* that they may get some increase and expedition on their routes; that they may interest themselves in it; that they, from their knowledge that there is a vast, rapidly growing mining interest here and there that the common world does not know of, may call attention to it and not be guilty of any fraud. What is everybody's business is nobody's business. It is action that brings great enterprises to a point. In your town or my town a man may come along and say “Mac, I tell you what; you ought to petition to have this road along here paved. Don't you see what a muddy place it is? Look at your wheels miring at your door;” and go on and describe to me my own wrongs. I say “Why it is a fact I never thought of.” “I will get a petition here. Now, to be sure if this is done and presented to the city council I do expect they will give me the contract; but I want it all along this street up and down and I am going to insert some notices in the paper and call the attention of the citizens to a thing about which they are dormant.” Has anybody ever charged that as being crime? Is that unlawful? Suppose he comes to me or you or anybody. I say “I never saw it in that light.” Says he, “Won't you get up a petition? Don't have it show it is in my handwriting, lest they will say, whatever may be the merits of it, ‘that fellow is after a job.’ You have never noticed it before, but I have awakened you to your interest. Now, won't you sit down and make a petition in your own handwriting?” “Certainly I will.” Nothing unlawful in that. And yet they say the great charge is here that he got up petitions, and said, “Don't have the petitions all in the same handwriting.” Do they pretend that there came as the result of that letter a single fraudulent thing? Come, let us go to the result. Did brother Bliss dare to say that this Wilcox understood it as being the commission of a rascality? Does he say that brother Wilcox went out with a roving commission of villainy and forged names or got the names of Congressmen or others whose genuine signature the papers did not bear? No, sir; he stopped at the letter and his instructions, and he says Wilcox is the man. He says the way he got the letters was that Wilcox sued Dorsey for work along the line. He would be a pretty rascal, now, if their theory was true, to sue us for illegal and *contra bonos mores* contracts, foul and stained with moral turpitude, which means in court legal death and damnation without the benefit of clergy. He would be in a sweet position to sue us for what their counsel intimate he must have done under the instructions of the letter, to wit, committed perjury. Now, mark, he does not say that the Eugene City and Bridge Creek route is stained with a single forgery or fraud, but he says here in another place:

So you see that Senator Dorsey was extremely useful in manufacturing and molding public opinion.

He wrote out there to have articles inserted in the press; is that an unlawful thing? Is it worthy of stripes in this day to be guilty of attempting to mold public opinion? If it is, God help us all. God help brother Bliss and brother Merrick? For although brother Merrick sat quiet, yet while brother Bliss was trying to mold public opinion with regard to us, he sat by and held the garments of him who stoned us. So you were trying to mold public opinion against us, were you not; and brother Bliss is charged with half of it, and no more.

Only this, and nothing more.

Senator Dorsey was a convenient instrument to help the manufacturing and molding of public opinion. Yes; to molder it and mold it. Now, is not that a terrible charge? Mr. Wilcox we should like to see here. We have a little transcript of what he said about deeds done in the body in pursuance of correspondence with brother Dorsey. [Holding up a letter.] *Ecce!* behold it!

Mr. MERRICK. He will be here, and I will look at your letter when you offer it in evidence.

M. MCSWEENY. Will he be here?

Mr. MERRICK. Yes, sir; he will be here.

Mr. MCSWEENY. Will he? We rejoice when you tell me so. This letter will be here, too. I want to vindicate Wilcox from what is imputed to him for fraud. I want to vindicate Wilcox, although he differed with us about a little account for going along this very route over mountain and moor, through hill and dale, by day and night. With pathetic appeal his story is told of what he faithfully did for us, and that we should pay him the amount that he claimed; but never one scintillation or intimation that he had understood us as doing or asking him to do one dirty thing. During Colonel Bliss's remarks he quoted from letters. Mr. Totten asked him, "Are you reading?" "No; but my memory is good." Suppose I take the same plan and say my memory is good. Suppose he had written a letter, and said in that letter: "I may have done this work too well. In calling public attention and the attention of the press to it, I may have worked it up to the full of faithfulness; but one thing I assure you, not an ungentle signature nor a false name is to anything I did." Supposing that there should be such a letter come in, and supposing, for the sake of the argument, that that is it [holding up a letter in his hand]. Now, bring on your Wilcox! Ring up your curtain!

Mr. MERRICK. They will both be here on the stand.

Mr. MCSWEENY. Will they? It is well that they should be. They shall have a pleasant reception.

Mr. MERRICK. They will be here, sir.

Mr. MCSWEENY. Now, there is a thing that brother Bliss talked about by the hour, that Eugene City and Bridge Creek route. There, there was the mischief, and there is all there is of it. I do not intend to elaborate any more upon that point.

Now, sirs, we say that there has not one dollar, as I have before remarked several times, ever been abstracted from the Treasury by us. There is not one wrong that we have done. I go away from indictments. I stand upon the higher plane; and for Dorsey I challenge an examination of his conduct in every portion of this affair. It will show him to be—

More sinned against than sinning.

And as to his conspiracy with Brady, I have already shown you its absolute absurdity. Why would not the conspirator be here to see how these matters were going on? Why would he come in and seek a stranger and then part with him? By the very severance in calling in Bosler, a perfect stranger to the transactions, the last lingering thought or link binding them together in all this matter is gone. In this vast service, in all its ramifications, that my brother Wilson has so well spoken of, you are, in view of this charge of conspiracy, to take into consideration its magnitude. Over two hundred thousand miles of star routes alone, as you have been told. Shakespeare makes one of his fairies, I believe Puck, say—

I will cast a girdle around the world.

Here is a girdle that would eight times out-Puck Puck, and circumnavigate this globe. As shown by the record, the mails in this very star-route service travel ninety-two million miles a year—enough for this Government to travel up to within three million of miles of the sun, which is as near as they want to get to any light. Ninety-two million of miles! With regard to this vast extent they are arguing about the crossing of a “t” or the dotting of an “i.” On this Eugene City route, way off there in Oregon, Senator Mitchell, a man whose name is synonymous with honor, writes, begs, urges, and scolds to Mr. Brady, and says, “This service must be put on. My constituents are clamoring. Nay, I tell you, sir, that so popular is the move, that it affects my political standing. They charge that I have not been faithful in representing the interests of the West. I want this Eugene City and Bridge Creek,” and mentioning two or three others. “Why this delay?” And yet here General Brady is charged with conspiring with us to do these dirty deeds. We want to know the men we are charged with conspiring with. General Brady is shown to have been the author of the protection to the subcontractors who used, oft in their far off home, to be cheated by the contractors because there was no provision for an assignment, and he is abused and vilified. I would rather have the good-night wishes, and the God bless you’s of the hardy stage drivers off in their mountain snow-path huts at the midnight hour, as they gather their little ones about them, and remember that because of Tom Brady’s care they are surrounded by plenty—I would rather have their farewell, good night, God bless you, Tom, than all the withered laurels that this administration will win and wear by the persecution of such as Tom; he will be remembered when they are forgotten.

Now, sirs, these expeditions, you have already been told, are to be governed by the amount of production. You were read to awhile ago by our friend, that production had a legal legislative meaning; that once it meant if it did not bear a certain proportion, cut it off; and another time it meant to dig around it, and if it would not produce so much, cut down the tree. Another suggestion is, that that is not the limit; but the narrow interpretation that it should pay expenses alone. The narrow construction of measuring the route by whether it paid is becoming annihilated with the march of time. The other circumstances are the matters that now control. I can hardly help getting away from the strict, stern statements which are required by the rule of law, when I think of this vast region, of the great West.

Westward the star of empire takes its way.

Indeed it does.

I was up at brother Wilson’s last night, and I happened to see lying there, Whittier’s poems; and I turned to them, and I saw how gallantly and nobly he sang in the days of the Kansas emigrants. It made me think of “Productiveness and other circumstances.” He said:

We cross the prairies as of old
The pilgrims crossed the sea,
To make the West, as they the East,
The homestead of the free!

We go to rear a wall of men
On freedom’s southern line,
And plant beside the cotton tree
The rugged northern pine.

and so the stars and the bars came together, and the star-route mail

service has marched with them ; and the men from the East, like the wise men, have followed the Western star and have stopped to worship it, and have cast their fortunes with us in the West.

Now, gentlemen, stand together. Obey the injunction of the court. Be true to yourselves, and then I think, as Polonius said to Laertes,

As day follows night thou canst not then be false to any man.

Remember that we are here to vindicate the liberties of these defendants. Remember also that we are standing over the grave of the dead soldier, Colonel Peck. A few days ago his honored grave was strewn with the flowers of spring ; grateful hands showed by their acts the reverence and respect they would express to the dead. Will you tear off those flowers, gentlemen, and send to the widow the withering verdict that a conspiring thief sleeps beneath that sod ? We stand here for the living, we stand here for the dead. He has gone away.

On fame's eternal camping ground
His silent tent is spread,
And glory guards, with solemn round,
The bivouac of the dead.

But you owe a duty to his wife. He has those that loved him. Over the ashes of the dead, and in the name of the living, we ask you to stand together and do what is right—remembering, as I close, the sentence of the Irish orator Curran :

That only can be punishment which lights on guilt ; that is only vengeance which breaks on innocence.

The COURT. Let me inquire whether there are any more openings ?
Mr. MCSWEENEY. No more.

At this point (12 o'clock and 30 minutes p. m.) the court took a recess for half an hour.

AFTER RECESS.

TESTIMONY FOR THE PROSECUTION.

Mr. KER. If your honor please, we commence by offering in evidence the records of the State Department showing the appointment of D. M. Key as Postmaster-General. It is certified to by the State Department, under seal of that department, and under the law I presume becomes evidence in itself.

The COURT. The court will take judicial notice of it.

Mr. TOTTEN. We will admit it.

The COURT. The court will take judicial notice that Mr. Key was Postmaster-General.

Mr. KER. The date of the appointment is the 12th day of March, 1877.

Mr. MERRICK. Had not the papers better be marked ?

The COURT. No ; they do not constitute any part of the record ; unless they are taken upon the record by the bill of exceptions they are only evidence.

The paper in question is as follows :

RUTHERFORD B. HAYES,

President of the United States of America.

To all who shall see these presents, greeting :

Know ye, that reposing special trust and confidence in the patriotism, integrity, and abilities of David M. Key, of Tennessee, I have nominated, and by and with the advice and consent of the Senate, do appoint him to be Postmaster-General; and do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same, of right appertaining unto him the said David M. Key, subject to the conditions prescribed by law.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the twelfth day of March, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and first.

[SEAL.]

R. B. HAYES.

By the President :

HAMILTON FISH,
Secretary of State.

Mr. KER. The next is the appointment of Horace Maynard, of Tennessee, to be Postmaster-General of the United States. It is dated the 2d of June, 1880. The appointment is signed, R. B. Hayes, President.

The appointment is as follows :

RUTHERFORD B. HAYES,

President of the United States of America.

To all who shall see these presents, greeting :

Know ye, that reposing special trust and confidence in the patriotism, integrity, and abilities of Horace Maynard, of Tennessee, I have nominated, and by and with the advice and consent of the Senate, do appoint him to be Postmaster-General of the United States; and do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same, of right appertaining unto him the said Horace Maynard, subject to the conditions prescribed by law.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the second day of June, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fourth.

[SEAL.]

R. B. HAYES.

By the President :

WILLIAM M. EVARTS,
Secretary of State.

Mr. KER. The next is the appointment of Thomas L. James, of New York, as Postmaster-General. The day of the appointment is the 5th of March, 1881. It is signed James A. Garfield, President.

The appointment is as follows :

JAMES A. GARFIELD,

President of the United States of America.

To all who shall see these presents, greeting :

Know ye, that reposing special trust and confidence in the patriotism, integrity, and abilities of Thomas L. James, of New York, I have nominated, and by and with the advice and consent of the Senate, do appoint him to be Postmaster-General; and do

authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same, of right appertaining unto him the said Thomas L. James, subject to the conditions prescribed by law.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the fifth day of March, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States of America the one hundred and fifth.

[SEAL.]

JAMES A. GARFIELD.

By the President:

WILLIAM M. EVARTS,
Secretary of State.

Mr. KER. The next is the appointment of Thomas L. James, of New York, as Postmaster-General, dated the 27th of October, 1881, and signed Chester A. Arthur, President.

The appointment is as follows:

CHESTER A. ARTHUR,

President of the United States of America.

To all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the patriotism, integrity, and abilities of Thomas L. James, of New York, I have nominated, and by and with the advice and consent of the Senate, do appoint him to be Postmaster-General: and do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold said office, with all the powers and privileges and emoluments to the same, of right appertaining unto him the said Thomas L. James, subject to the conditions prescribed by law.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States of America the one hundred and sixth.

[SEAL.]

CHESTER A. ARTHUR.

By the President:

JAMES G. BLAINE,
Secretary of State.

Mr. KER. The next is of a little different order. It is the appointment of Thomas J. Brady, of Indiana, to be Second Assistant Postmaster-General. The date of the appointment is July 24, 1876. It is signed U. S. Grant, President.

The appointment is as follows:

ULYSSES S. GRANT,

President of the United States of America.

To all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the integrity and ability of Thomas J. Brady, of Indiana, I have nominated, and by and with the advice and consent of the Senate, do appoint him to be Second Assistant Postmaster-General; and do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office, with all the powers, privileges, and emoluments thereto, of right appertaining unto him the said Thomas J. Brady, subject to the conditions prescribed by law.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States of America the one hundred and first.

[SEAL.]

U. S. GRANT.

By the President:

HAMILTON FISH,
Secretary of State.

THOMAS B. KIRBY sworn and examined.

By **Mr. KER** :

Question. What is your business?—Answer. I am employed in the railway mail service in the Post-Office Department at present.

Q. What were you in 1879?—A. I was a private secretary of the Postmaster-General.

Q. Who was the Postmaster-General at that time?—A. Hon. D. M. Key.

Q. Did you prepare or assist in the preparation of rules and regulations for the Post-Office Department?—A. I did.

Q. At what time was it that you prepared the regulations?—A. I was designated by the Postmaster-General by an order dated on the 4th—

Mr. HINE. [Interposing.] Wait a moment. Let him produce the order.

Q. Did you prepare the regulations?—A. I did.

Q. [Submitting a book.] Look at that book and tell us if it contains the regulations that you prepared.

Mr. HINE. Wait a moment. Of course they would not ask that as a preliminary question unless they intended to introduce the book in evidence. Manifestly it would not be competent at this stage of the case to introduce the book; and the preliminary question is therefore immaterial. By no possibility may they introduce in evidence rules and regulations which a clerk of a department says he prepared.

The **COURT.** You have not come to the point of making your objection yet.

Mr. HINE. Except as to its immateriality.

The **COURT.** We do not know whether it is immaterial or not.

Q. Where did you get this book?

The **WITNESS.** This present copy, do you mean?

Mr. KER. The one that you hold in your hands.

A. I got it in the department this morning in response to your request.

Q. What department? The Post-Office Department?—A. Yes, sir.

Q. Is it one of the books of the department?—A. It is a copy similar to that which is furnished to all postmasters and other officials of the department for their information and guidance.

Q. That is the book you prepared under the directions of the Postmaster-General.—A. Yes, sir.

Q. [Submitting another book.] Will you look at this book and state what it is?—A. That is a copy of the postal laws and regulations published in 1873, by Mr. McGrew, who at that time was chief clerk to the Auditor of the Treasury for the Post-Office Department, and Mr. Ireland, who was then chief clerk to the Third Assistant Postmaster-General.

Q. Where does this book belong?—A. It belongs in the department, but it has no authority in the department any more, as by an order of the Postmaster-General—

Q. [Interposing.] Where does this book come from?—A. From the department.

Q. What department?—A. The Post-Office Department.

Q. Is it one of the books that is used there?—A. Not now.

Q. Was it one of the books that was used there?—A. It was up to the time this edition of 1879 was published.

Mr. KER. If you will be kind enough to state the facts, we will put the law to you.

Q. That book was used up to the time the other book went in use?

A. Yes, sir.

Q. Did you use that book in any way in compiling the one you prepared?—A. Somewhat; but very little.

Q. This book is one of the records of the department?—A. Yes, sir.

Q. And so is the other?—A. Yes, sir.

Q. Will you state to the court and jury at what period this book went into operation; in other words, at what time the regulations were promulgated?

Mr. HINE. I object to the question as incompetent.

The COURT. What is your objection?

Mr. HINE. It is incompetent for this witness to testify as to the matter. In the first place these books are not evidence here; and in the second place, if they were or could be produced in evidence they must speak for themselves, and this witness could not testify to a conclusion of fact and law about them.

Mr. KER. I apprehend that might be so; but the date of the book would not necessarily be the date of its promulgation.

The COURT. It would be presumed to be the date if it has a date.

Q. [Exhibiting to witness a signature in the first part of the book.] Whose signature is that?

Mr. HINE. Wait a moment. Do you withdraw the question that you asked?

The COURT. The witness need not answer the first question now.

Mr. TOTTEN. You do not mean to say that is an original signature, do you?

Q. Do you know whose signature it is?

The WITNESS. I am waiting instructions of the court as to what I shall answer.

Mr. KER. Is there any objection to the question? If there is let us have it. I suggest to your honor that if there is any objection that the gentleman making the objection should arise. There are so many of the counsel that it is impossible to tell who is objecting unless they get up on their feet and let us see them. If they do not it will be utterly impossible to know where the objection comes from.

The COURT. You have not yet proved that those are the regulations of the department. You have proved where they were brought from.

Mr. BLISS. One question he put was whether those regulations were promulgated by the Postmaster-General.

The COURT. That is a proper question.

Mr. BLISS. That was put, sir.

The WITNESS. Did I answer that?

Mr. BLISS. No; I think not.

The WITNESS. I would answer that they were promulgated by the authority of the Postmaster-General.

By Mr. HINE:

Q. That was in writing, was it not?—A. No, sir.

By Mr. KER:

Q. When were they promulgated?—A. It was originally in writing.

Q. At the time that signature was put on, or when?

Mr. HINE. The witness has already stated that they were promulgated originally in writing. Of course they were. The Postmaster-General does not promulgate by simple oral declaration. It must be in writing. Now, this witness has stated that they were originally promul-

gated in writing. If so, they should produce the writing, manifestly. We want to make no captious objections, but——

The COURT. [Interposing.] The question ought to be, it seems to me, whether these are the regulations used in the department. If they are used in the department, the court will presume that they were promulgated properly.

Mr. MERRICK. Mr. Wilson read from a book which is the same as this.

The COURT. There has been nothing read from it in my hearing.

Mr. MERRICK. He read from it in his opening to the jury.

The COURT. But now we are on the testimony.

Mr. MERRICK. He admitted it to be the book.

By Mr. BLISS :

Q. Are those the regulations in use in the department at the present time ?—A. They are, so far as they have not been changed by special orders of the Postmaster-General and acts of Congress.

Q. How long have they been so used ?—A. Ever since the first day of July, 1879.

Mr. KER. Now we have got it by going in a round about way. If the witness had answered my question in the first place we would have reached the same result quicker.

By Mr. KER :

Q. And these (the regulations of 1873) were in use before the others came ?—A. Yes, sir.

By Mr. BLISS :

Q. Have there been any changes in the regulations of 1873 between 1873 and the date that the others went into use ?—A. A great many. The regulations are subject to constant change, almost daily, by order of the Postmaster-General.

Q. Then when you say that those were in use from 1873 up to the commencement of 1879, you mean except as altered by orders made in the mean time ?

The WITNESS. Precisely; and acts of Congress.

Mr. KER. We now propose to offer these books in evidence. One is called the Postal Laws and Regulations of 1873, and the other the Postal Laws and Regulations of 1879.

Mr. TOTTEN. Now, if your honor please, both of those books are very useful in their way; but more than half of them are copied from the Revised Statutes. They are the laws of the land relating to the Post-Office Department. I suppose the gentlemen do not mean to introduce those as testimony to the jury, nor do they intend to confine us to that book for our law.

The COURT. Oh, no; the gentlemen have no such power over you.

Mr. TOTTEN. I do not think so. Therefore there is no use in offering those books in evidence as a body.

The COURT. We will admit them as the regulations of the Post-Office Department.

Mr. TOTTEN. It is stated by the witness—and of course he knows a good deal about it—that those rules and regulations are in force, except where they have been altered by orders and acts of Congress; so I think we had better have those exceptions pointed out.

The COURT. We will see whether that is necessary.

Mr. HINE. I have another objection to their reception, and that is that there is no act of Congress that authorizes such books to be used as

evidence in court. They cannot be introduced at all except upon the ground that they are rules and regulations of the department. The witness says he compiled them from orders of the department. Those original orders would be the best evidence in the world.

The COURT. If there never was an order issued in writing, and it was proved here, as this witness has proved, that they were used as regulations of the department on the authority of the Postmaster-General, I would admit them.

Mr. HINE. I raise my point. Let it be passed upon.

The COURT. You may take an exception.

Mr. HINE. That is what I want.

The COURT. I am not going to waste time on questions like this.

CROSS-EXAMINATION.

By Mr. HINE:

Q. Did you ever compare these with the rules and regulations as compiled by the Postmaster-General?—A. No, sir. It was gotten up in this way, if you care to hear about it——

Mr. HINE. [Interposing.] Not at length.

The WITNESS. It will take some little time to explain how the whole thing was done.

Q. When did you first come in connection with these books?—A. By the order of the Postmaster-General designating me to prepare and superintend the publication.

Q. About what time?—A. Dated on the 4th of March, 1879.

Q. You commenced, then, on that day?—A. Yes, sir. I went to work on them. They were compiled by the 1st of July.

Mr. TOTTEN. They went into operation July 1, 1879?

The WITNESS. Yes, sir.

Mr. BLISS. If your honor please, as there is one particular regulation to which reference will be constantly made, I may as well read it. It is section 620:

Determination of compensation for increased celerity—When it becomes necessary to increase the speed on any route, the contractor will be required to state, under oath, the number of horses and men required to perform it, with the proposed increase of speed.

Perhaps I had better also read section 621:

Decreased compensation for decreased service.—The Postmaster-General may discontinue or curtail the service on any route in whole or in part, in order to place on the route superior service, or whenever the public interest, in his judgment, shall require such discontinuance or curtailment for any other cause, he allowing, as full indemnity to contractor, one month's extra pay on the amount of services dispensed with, and a pro rata compensation for the amount of services retained and continued.

THOMAS S. TAYLOR sworn and examined.

By Mr. KER:

Question. What is your full name?—Answer. T. S. Taylor.

Q. What does "T" stand for?—A. Thomas.

Mr. KER. We don't take initials in this court.

Q. What position do you hold?—A. Assistant journal clerk.

By Mr. BLISS:

Q. Where?—A. In the Post-Office Department.

By Mr. KER:

Q. What is the journal, and what do you mean by journal clerk?—

A. I put on the book all the orders from the Postmaster-General; the general orders.

Q. When are those orders placed there; each day, or when?—**A.** Each day.

Q. At the end of the day what becomes of the journal?—**A.** It is signed by the Postmaster-General.

Q. Always?—**A.** Not always the same day.

Q. At what interval is it signed?—**A.** Sometimes two or three days, or a week.

Q. And sometimes longer than that, is it not?—**A.** Sometimes; according to whether the Postmaster-General is at home or not.

Mr. KER. The orders made by the Postmaster-General are placed upon the journal each day. That journal ought to be signed at the end of the day by the Postmaster-General. In point of fact it is sometimes a week before he signs it.

Mr. WILSON. Who is the witness, your honor?

The COURT. That is a pretty good report.

Mr. TOTTEN. We don't want to hear it over again.

Mr. BLISS. He was repeating what the witness said; you said you could not hear.

Mr. TOTTEN. I did not ask him to repeat it.

Q. Have you made a search in that book from the time of the appointment of Mr. Brady in July, 1876?—**A.** I have not.

Q. From what date?—**A.** From the 1st of January, 1879, to July 1, 1881.

Q. Did you find any order on the book relating to expedition?—**A.** I have not.

Q. From the 1st of January, 1879, you have found no entry on the book of any order made for expedition?—**A.** No, sir.

Q. Have you one of those journals here?—**A.** I have not.

Q. Are there one or more books?—**A.** Two or three of them; three books.

By the COURT:

Q. Between what dates?—**A.** The 1st of January, 1879, and the 1st of July, 1881. I think there are only two books, come to think of it.

By Mr. BLISS:

Q. You can get them, can you not?—**A.** I presume so, on the order of the Postmaster-General.

Mr. KER. Will you go back to the Post-Office Department and have those three books brought here?

The COURT. There are only two books he said.

[A book was here submitted to the witness.]

By Mr. KER:

Q. Which one is that?—**A.** I do not know anything about it. I have nothing to do with this journal.

Mr. BLISS. This was brought here for an entirely different purpose. It is not one of the books he is connected with.

Mr. KER. Do the gentlemen desire to ask him any questions before he brings the books?

Mr. WILSON. When you get through with him.

Mr. KER. I want to send him after his books. It is a mistake that they have not been brought.

The WITNESS. I did not know I was to bring them.

Mr. KER. Go back to the department as speedily as you can, and have those books brought here before 3 o'clock.

Mr. WILSON. Wait a moment. Let me ask you a few questions.

CROSS EXAMINATION.

By Mr. WILSON:

Q. What do you mean when you say that you find no entry of expedition between January 1, 1879, and the 1st of July, 1881?—A. I meant I found no order in relation to the expedition signed by the Postmaster-General.

Q. Was it July, 1880, or 1881?—A. Eighteen hundred and eighty-one, I believe.

Q. How many journals were kept?—A. Only two books in reference to the general orders.

Q. Are you talking about general orders, or what are you talking about?—A. General orders of the Post-Office Department, signed by the Postmaster-General.

Q. Explain what general orders are?—A. Anything about post-office matters, not appointments or anything of that kind; sometimes orders for examining the clerks.

Q. Who makes the orders about increases and expedition of the service?—A. The Second Assistant Postmaster-General, I believe.

Q. Who enters them upon the record?—A. Mr. Morgan at present.

Q. Who at that time entered them upon the record?—A. Mr. Wilson.

Q. Where is he?—A. He is in the room.

Q. These books you say are in the department?—A. Yes, sir.

Q. Is there a journal kept having reference to increases and expedition?—A. I do not know; I cannot say.

Q. You do not know whether there is or not?—A. No, sir.

Q. Have you made any examination for any such record or any such journal?—A. I looked through my books for the orders.

Q. Simply looked through yours?—A. Yes, sir.

Q. You do not know whether there is any other book kept or not?—A. There is another book kept by Mr. Wilson.

Q. You do not know whether there is a journal of expedition and increases or not?—A. No, sir.

Q. You do not know anything about it?—A. I have nothing to do with that class of work. I presume there is a book kept; in fact I know there is.

Q. I understood you to say there was no entry of any expedition, what do you mean by that?—A. In my book.

Mr. BLISS. General orders.

The WITNESS. Signed by the Postmaster-General.

Q. I did not see the force of the inquiry at all. What you mean to say is then that in the journal that is kept of the action of the Postmaster-General there is no general order giving direction as to increases and expeditions generally?—A. Nothing in my books that I can find.

By the COURT:

Q. You keep that book?—A. I do, sir.

Q. No other clerk keeps such a book?—A. I will explain that there is another book kept.

Mr. MERRICK. Your honor did not understand.

Mr. WILSON. Yes.

The COURT. You have introduced these two books containing the

general regulations of the department. Those are promulgated by the head of the department for the use of the department.

Mr. MERRICK. Yes, sir.

The COURT. And the witness stated that those were the regulations, to-day, except where they have been altered by subsequent general orders or acts of Congress. I understand you to call this witness for the purpose of showing that on this subject of expedition no general order had been made by the Postmaster-General.

Mr. MERRICK. That is it, sir.

The COURT. And that is all he has proved.

Q. You do not pretend to say that there are no orders in relation to specific expeditions that may have occurred from time to time in the department?—A. Nothing in my book. There is a journal kept of all those matters.

Q. But nothing in your book?—A. I only keep the orders that are signed by the Postmaster-General.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. Does any change in the regulations go upon your book?—A. Yes, sir.

Q. Therefore, if there had been any change since the adoption of the regulation of 1879, it should properly go on to your book?—A. Yes, sir.

Q. And you find nothing there relating to the subject of expedition?—A. No, sir.

Mr. BLISS. Would you like to have him produce the book?

Mr. WILSON. I don't care anything about it.

Mr. BLISS. We are merely proving a negative.

Mr. TOTTEN. You are trying to prove that there has been no change in the regulation?

Mr. BLISS. Precisely. Have you just woke up?

Mr. TOTTEN. That is what all this fuss is about. I don't want the book.

Mr. BLISS. When we were examining in-chief one of the counsel said there might have been alterations.

Mr. WILSON. Your witness said that.

Mr. BLISS. Mr. Hine said that. Well, we will not have the book. [To the witness.] That will do.

JOHN H. FALCONER sworn and examined.

By Mr. KER:

Question. What is your employment?—Answer. Statistician.

Q. Where?—A. Post-Office Department.

Q. Did you occupy that position in 1878 and 1879?—A. I did not, sir.

Q. What year did you begin to occupy that position?—A. I was an assistant at that time that you speak of and helped to make up the reports.

Q. Are you able to tell us from the records you have in your department, or from your own knowledge, of the number of star routes in existence in March and July, 1878?—A. [Referring to a book.] I have here the facts which I assisted to get together, or else entirely got them together myself—from which this is printed. This report is dated the 30th of June, 1878, on which day I can give you the number of routes.

Q. That is what we want to know.—A. On the 30th of June, 1878——

Mr. TOTTEN. [Interposing.] Now what does he propose to give us?

Mr. BLISS. The aggregate number of star routes.

Mr. TOTTEN. On this date?

Mr. BLISS. On the day he has named.

Q. How many were there?—A. Eight thousand eight hundred and eleven on the 30th of June, 1878. Do you want the length?

Mr. BLISS. Give us the length.

The WITNESS. The length in miles is two hundred and six thousand seven hundred and seventy-seven.

Q. The book to which you are referring belongs to the Post-Office Department, does it not?—A. Yes, sir.

By Mr. BLISS:

Q. What is it?—A. The report of the Postmaster-General for the fiscal year terminating June 30, 1878. The portion from which I have read was made up in our room, the portion with which I have assisted my memory.

By Mr. KER:

Q. What page have you spoken of?—A. Page 57 of this book.

By Mr. TOTTEN:

Q. That is the Postmaster-General's report for what?—A. The fiscal year ending June 30, 1878.

Q. It is the report that was sent to Congress in December?—A. I think it was probably prepared in November, and sent to Congress early in the session. The date will show.

Mr. BLISS. The particular passage he refers to is the report of the Second Assistant Postmaster-General, dated the 1st of November, 1878.

The WITNESS. That is a part of the Second Assistant's report, but it is embodied in the Postmaster-General's report from the manuscript that we prepared.

Mr. BLISS. The Postmaster-General's report, in which it is embodied, is dated the 9th of November, 1878, and is addressed to the President, and probably went to Congress in December.

Mr. KER. Do you desire to cross-examine the witness?

Mr. WILSON. Are you through?

Mr. BLISS. Yes.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. How many steamboat routes were there?—A. By the same memorandum I can tell on the same date, one hundred and six steamboat routes.

Q. How many miles?—A. In length, eighteen thousand and sixty-nine.

Q. How many railroad routes?—A. One thousand.

Q. Length?—A. Seventy-seven thousand one hundred and twenty.

Q. Tell the jury what was the aggregate mileage of the carriage of that year.—A. This occurs in another part of the report which also we made up in our room. I believe I made it up myself, or I assisted in making it.

Q. That is for the fiscal year ending June 30, 1878?—A. Yes, sir; what we call the total annual transportation of all the service done. Do you mean for the star routes?

Mr. WILSON. Have you got the aggregate of all of them for that year?

A. Yes, sir.

Q. Just give us the aggregate of the whole of them.

The WITNESS. Railroad, star, and steamboat?

Mr. WILSON. Yes, sir.

The COURT. This is what you used in your opening, is it not, Mr. Wilson?

Mr. WILSON. The same thing exactly.

A. The total annual transportation of all three kinds of service was one hundred and fifty-eight million one hundred and eighty-five thousand three hundred and seventy-five, as the service was in operation on that day.

Q. Now give us the aggregate mileage for the star routes alone.—A. Sixty-one million four hundred and thirty-five thousand six hundred and eighty-two.

Q. Have you the statistics as to these matters, with reference to which I have just inquired, for the fiscal year ending the 30th of June, 1879?—A. I have the facts, sir, but not here.

By the COURT:

Q. Let me ask you what you mean by mileage of these enormous amounts?—A. The total number of miles that are traveled.

Q. The number of miles that the mails are carried backward and forwards through the year?—A. Yes, sir; during the whole year.

Mr. INGERSOLL. It is the number of miles the mails are carried.

The COURT. It is not the length of the routes?

Mr. MERRICK. No.

By Mr. MERRICK:

Q. Does that mean one way on the route or both ways?—A. Both ways.

Q. If the route is four miles long then it is put down as eight miles?—A. Yes, sir; every route is calculated to and fro.

By Mr. BLISS:

Q. And if there are ten trips over it a day it is counted ten times a day for the entire length?—A. Yes, sir; back and forth ten times.

By Mr. WILSON:

Q. In other words, it shows the exact number of miles traveled?—A. That is exactly it.

Q. In carrying this service?—A. Yes, sir.

Q. You say you have not those other statistics with you?—A. Not with me; no.

Q. I would like to have you bring the same statistics with reference to the fiscal year ending June 30, 1879, and June 30, 1880, and come in tomorrow morning so that we can finish your cross-examination.—A. All right, sir.

By the COURT:

Q. These facts are all in public documents printed by order of Congress?—A. All of them.

The COURT. Why go over this? You can read them to the jury.

Mr. WILSON. I simply want to have him bring them in and get them in evidence.

The COURT. They are evidence. The court will take judicial notice of them.

Mr. TOTTEN. Yes, your honor, there is no question about that; but the point we make is as to what the prosecution desire to go to the jury.

Mr. BLISS. Technically, we have put in nothing except the fact of the number of star routes on a given day; that is all. We do not propose to put these books in at all. If they want additional evidence on this subject, though in strictness it is not cross-examination, we are not going to object to its going in.

The COURT. You did not object.

Mr. BLISS. No, sir; we do not propose to make any objections of that class.

The COURT. I should presume, with regard to all these official documents, of which the court takes judicial notice, that the most expeditious way of getting the evidence would be to produce the publications themselves, and let either party read what is wanted.

Mr. WILSON. I will be glad to have the witness simply bring us the book here, so that we will have an authentic copy. We do not want to consume time.

The COURT. The Supreme Court has decided that the court will take judicial notice of all these publications, and take judicial notice of every officer in the department.

Mr. WILSON. We have nothing further with the witness, except that I would like to have him return and bring these books.

The COURT. I mean the prominent officers; those who have been confirmed by the Senate.

The WITNESS. [To Mr. Wilson.] Do you want them to-morrow morning?

Mr. WILSON. I would be glad to have you come in with them at 10 o'clock, if you please.

AMOS M. WILSON sworn and examined:

By Mr. KER:

Question. Are you employed in the Post-Office Department?—Answer. I am.

Q. What branch of the Post-Office Department are you in?—A. I am in the inspection division of the Second Assistant Postmaster-General's office.

Q. Were you in the journal room at any time?—A. Yes, sir.

Q. Did you have charge of the journal?—A. I did.

Q. When?—A. I had charge of the journal from April 9, 1869, until July 7, 1880.

Q. When orders for expedition or reduction of time were made in the Second Assistant Postmaster-General's office, did they come to your office?—A. They should; I presume they did.

Q. What was done with them there?—A. They were recorded.

Q. In what?—A. In the journal.

Q. Each day upon receipt?—A. Yes, sir.

Q. Was the order in writing or a verbal order?—A. In writing.

Q. Always in writing?—A. Always.

Q. What became of the order in writing that you received?—A. It was returned to the clerk who made it up.

Q. In the Second Assistant's office?—A. Yes, sir.

Q. After being entered upon the journal you returned it to the Second Assistant's office?—A. Yes, sir.

Q. When the entry was made upon the journal each day, was that

entry signed by the Postmaster-General on that day?—A. It may have been on some other day; perhaps it would be taken to him once in two weeks.

By the COURT:

Q. To be signed by the Postmaster-General?—A. Yes, sir.

By Mr. KER:

Q. It might have been two weeks after it was entered on the journal before the Postmaster-General actually signed it?—A. It may have been, I presume.

Mr. WILSON. Hold on; I want to know what the facts are. Not what might have been, your honor.

The COURT. Oh, well.

The WITNESS. Those were the facts. Sometimes they were signed on the same day and sometimes several days afterwards.

Q. When the order reached you and was entered upon the journal, when was that entry certified or conveyed to the Sixth Auditor, as he used to be called?—A. At the end of each week.

Q. Was it certified to the auditor whether it had been signed by the Postmaster-General or not?—A. Yes, sir.

Q. It was certified in the usual course of business to the auditor without regard to his signature?—A. It was.

Q. Then, if Mr. Brady made an order expediting or reducing, the time it reached your office was entered on the journal, and was to be signed, and in that case would have been certified to the auditor?

Mr. WILSON. Do not answer. We want the facts, if your honor please.

The COURT. I want to inquire for information about the Postmaster-General signing these. Is it the Postmaster-General or the Second Assistant?

The WITNESS. The Postmaster-General. It is called the Postmaster-General's journal.

The COURT. Are the orders made by him?

The WITNESS. The order is drawn up by the clerks usually, I presume, and signed by the Second Assistant. It comes to me with the Second Assistant's signature.

The COURT. I merely wanted to know whether I understood you.

Mr. WILSON. Is your honor through?

The COURT. Yes, sir.

Mr. WILSON. Now, if your honor please, I have two objections to this testimony. In the first place, if it is competent at all at this stage of the proceedings the journal itself will show the facts, and the journal ought to be produced, and we insist that that journal ought to be here. These things that transpired a long time ago, we insist shall not be left to the recollection of anybody. When the journal itself is here it will speak and tell exactly what it contains. The second point of objection that I have to make to this testimony is this: That this evidence that these gentlemen are introducing, if it is of any avail at all, if it is to cut any figure in this case, must be for the purpose I presume of proving a conspiracy between these parties. Now I submit, if your honor please, that before we enter into this great sea of testimony, these records, and so forth and so forth, that the court ought to require of the prosecution to give your honor some sort of indication that there has been a conspiracy entered into between these parties.

The COURT. Mr. Bliss spent two days on that subject.

Mr. TOTTEN. What we want is proof.

Mr. MERRICK. We are giving it.

Mr. WILSON. I know Mr. Bliss spent two days on this subject.

The COURT. In giving intimations of what he wanted to prove.

Mr. WILSON. Yes, but your honor, we come now to the question of testimony—proving a conspiracy. That is the question we have before us now. Now, here is an executive office and men are discharging their duties as executive officers in the regular mode provided by law. Now, I say that before they go into the acts of these officers which are required by the law to be performed—before they can go into that for the purposes of this case, if there is anything tending to show a conspiracy, which is the gravamen of this offense, they ought to bring that first to the attention of the court. I think, if your honor please, that is not the thing, and I submit, if your honor please, that proceeding to prove overt acts when there is no testimony whatever tending to show any conspiracy ought not to be permitted. Now, I know it is in the power of the court to allow the prosecution to begin almost anywhere in the testimony. They give the court to understand that they are going to connect this and that and the other thing together; but this case does not stand on the ordinary footing of cases for conspiracy, because, as I said a moment ago, the acts that we are now talking about are the acts of a Government official, entering up his orders in the regular course of official duty, without anything whatever to indicate that any one of those acts was in any way wrong. Now, I submit the two objections to it: one that they ought not to be permitted to go into this at this stage of this case, and the other that the journal itself is the proper evidence.

The COURT. The evidence offered is not evidence to prove any acts of the Second Assistant Postmaster-General. The book is not here, as I understand. It has not yet been produced in evidence. The testimony of this witness is merely to show the course of business in the office.

Mr. MERRICK. That is the only purpose.

The COURT. Now, that does not prove any facts involved in this controversy.

Mr. TOTTEN. Your honor, he is undertaking to show that these orders are not signed every day, and I say that is a matter which can be shown by the book.

The COURT. He has not undertaken to show anything of the sort, as I understand it.

Mr. TOTTEN. He says that they are sometimes signed every day, and sometimes once in two weeks.

The COURT. That is merely as to the course of business of the office. No book has been offered in evidence.

Mr. TOTTEN. Our objection is that he is undertaking to show the contents of a book; that such and such things are not of record.

The COURT. I do not understand it that way at all. Now it is the duty of every court to keep a record. The records of this court are regularly signed by the judge who holds the court, and probably they ought to be signed every morning. In point of fact, they are not signed every morning, and, indeed, not until several days have passed. But when they are signed they are the records of the court. Now this witness is examined for the purpose of proving the method of business in the office. That is all.

Mr. MERRICK. That is all, sir.

The COURT. There is no other evidence at all.

Mr. WILSON. The trouble about that is this, if you will bear with me

a moment. Mr. Ker was very particular to repeat that if Mr. Brady made an order, and it was entered on the journal of that day, then it was certified at once to the auditor irrespective of the question whether or not the journal had yet been signed by the Postmaster-General. He was particular to state that.

The COURT. Yes.

Mr. WILSON. Now, then, if anything of that kind occurred in any one of these cases, this testimony ought to be confined to these routes; it ought to be confined to the matter set forth in the indictment.

The COURT. Whenever that comes up, and we have that book, and they offer to prove any particular act of Brady, we will hear you upon that point.

Mr. WILSON. If your honor please, I understand it is——

The COURT. [Interposing.] I understand this evidence is nothing more than to prove the usual course of business of the office.

Mr. WILSON. Very well; if that is the limitation of it we are content.

By Mr. KER:

Q. Now, Mr. Wilson, what is your answer to that question?

Mr. TOTTEN. Repeat the question.

The WITNESS. Please repeat the question.

Q. The question is, if Mr. Brady, in the official course of his business, made an order increasing the expedition and reducing the time, and sent it to your office, and it was entered on the journal, and had not on that day been signed by the Postmaster-General, would you have certified that order to the Sixth Auditor?

Mr. TOTTEN. That does not come within the rule of the course of business at all. That is argumentative. It is not a fair question to put at this stage of the case.

The COURT. It is exactly what the court has ruled upon.

Mr. TOTTEN. It is putting a hypothetical question to the witness; if this was not done what else was done?

The COURT. That is not the course of business, as I understand it.

Mr. MERRICK. I will vary the question, if not intruding upon Mr. Ker.

By Mr. MERRICK:

Q. When the Second Assistant Postmaster-General, at the time of which you have spoken, made an order of expedition, and it was entered upon the journal, would it go to the office of the auditor before the Postmaster-General approved the proceedings of the day?

Mr. TOTTEN. That is unfair, because it assumes that Brady did do that.

Mr. MERRICK. I want to know the course of business of the office, in regard to the certificates to the auditor of the transactions in the Second Assistant Postmaster-General's office?

A. It would have gone to the auditor whether the journal had been signed by the Postmaster-General or not.

Mr. BLISS. [To counsel for defense.] He is your witness.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. You say that these orders that are sent over to the inspection division are sent back to the clerk who makes out those orders?

The WITNESS. Sent over to the inspection division ?

Mr. WILSON. To the journal clerk.

A. Yes, sir.

Q. We want to get the course of business now. When the clerk makes out the order for the expedition or increase, where does it go?—

A. It goes to the Second Assistant Postmaster-General.

Q. Then where does it go?—A. Then it comes to the journal desk.

Q. To the journal desk ? What division is that in?—A. It was in his division I believe. I presume it is yet.

Q. In the Second Assistant's office?—A. Yes, sir.

Q. And there it is entered on the journal?—A. Yes, sir.

Q. Then where did it go ?

Mr. BLISS. He is not now in that particular place.

Mr. WILSON. I am talking about the period you are talking about.

Q. [Resuming.] Where did it go first after it was entered on the journal ?—A. I believe I shall have to correct myself. Sometimes it went to the division of statistics.

Q. Did it not go first to the railway mail service division?—A. No, sir ; not then. I do not remember though positively.

Q. You are not sure about that?—A. I am not positively sure whether those orders expediting service went to them or not. A clerk employed in that branch of the service came into the journal room and took such orders as they required and made a transcript of them usually every day. I do not know whether he did during that time or not.

Q. Then where did the paper go from there?—A. After record on the journal it went to the statistical division, to the statistics clerk.

Q. And from there where did it go?—A. He returned it to the clerk, who made it up, I suppose.

Q. It went back to the place from whence it started?—A. Yes, sir.

Q. And that was the usual course of business?—A. It was.

Q. How long has that course of business prevailed there?—A. With the exception of the clerk of the railway mail service making a transcript of them, that prevailed from the time I took the desk.

Q. And you took that desk in 1869?—A. Yes, sir ; according to my recollection.

Q. Then you say that after this record had been made on the journal this order making the increase or expedition, as the case might be, or both, or any other order emanating from the Second Assistant or from the Postmaster-General, was certified to the auditor?—A. Yes, sir.

Q. Who certified it?—A. The Second Assistant.

Q. Who drew up that certificate?—A. I put the certificate on.

Q. You did that?—A. Yes, sir ; the journal clerk did that.

Q. The journal clerk did that, and took it to the Second Assistant to be signed?—A. Yes, sir.

Q. And forwarded?—A. Yes, sir. The journal clerk, or report clerk, perhaps, sometimes.

Q. Now how long has that practice prevailed in the department?—A. It was the practice when I entered upon duty there.

Q. And continued as long as you staid there?—A. Yes, sir.

Q. In 1880?—A. Eighteen hundred and eighty, yes, sir.

Q. During the time that General Brady occupied the position of Second Assistant Postmaster-General, he did not originate that mode of doing business, did he?—A. No, sir.

Q. He did not pursue any method in regard to this thing that was different from what had been pursued by his predecessor?—A. Not that I know of.

Mr. BLISS. In regard to expedition?

Mr. WILSON. In regard to this thing that we are talking about.

Mr. BLISS. The certifying do you mean?

Mr. WILSON. I am speaking of the whole of it.

Mr. BLISS. Oh, I object.

Mr. WILSON. I am talking about those things about which you have been interrogating him.

Mr. BLISS. We have not interrogated him about expedition—that Mr. Brady did not pursue any different method in this matter of expedition than had been pursued before. If the question is as broad as that, as might be claimed, then I object to it. But if it means with reference to certifying and the course of practice in making orders I do not object.

The COURT. I understand the question to relate to that.

Mr. WILSON. Of course; that is all that I am talking about.

Mr. MERRICK. We only wanted to get it defined. It was so broad that it might be misunderstood.

By Mr. WILSON:

Q. You have said that on the same day that the service, for example, would be increased by an order signed by the Second Assistant it would be entered upon the journal, and it would be immediately certified to the auditor irrespective of the question whether the journal had been signed by the Postmaster-General or not. That I understand you to say?—A. No, sir; usually within a week. Not immediately.

Q. It would be certified usually within a week?—A. Within a week or ten days; yes, sir. An abstract of all the orders issued and a report of all the orders issued was made to the auditor weekly.

Q. It is not the fact, then, that immediately upon the order being entered upon the journal that order was certified to the auditor?—A. No, sir; not the same day.

Q. You would certify it to the auditor sometimes once a week?—A. Well, weekly. The report was weekly. But sometimes it was not completed within the week. It took perhaps some several days longer.

Q. Did you enter your orders every day?—A. We did.

Q. Did you ever get behind?—A. Oh, yes; frequently.

Q. So sometimes you would not get them all entered on the same day?—A. Oh, yes. I have known it to take three days to enter the orders of one day.

Q. But they would all appear finally as entered of the day they were made?—A. Yes, sir.

Q. But you would get behind?—A. Yes, sir.

Q. Now, ordinarily the Postmaster-General signed that record every day, did he not?—A. Every day's orders were signed.

Q. How frequently did he sign them?—A. Well, about, I should think, on an average of once in two weeks.

Q. Now, come back to my other question. I want to know whether during the administration of that office by General Brady there was any change made in the manner of doing this business from the manner in which it had been done from the time you took charge of that desk in 1869?

The WITNESS. You mean the business of my own desk?

Mr. WILSON. Yes; I mean this business of certifying to the auditor.

—A. No change that I remember.

Q. His methods, then, were the same as the methods that had prevailed with other Second Assistants from the time that you first knew that desk?—A. Yes, sir.

Q. Every day there was a blank left for the Postmaster-General to sign, was there?—A. Yes, sir.

Q. And if he did not sign it every day, when he did come to sign he signed each one of these day's proceedings?—A. Yes, sir.

Q. As many times as there were days?—A. Yes, sir; if he was acting Postmaster-General at the time.

Q. Well, I am talking about the Postmaster-General. Either the Postmaster-General himself or whoever was Acting Postmaster-General, signed it?—A. Yes, sir.

Q. The fact is that each day's proceedings were signed?—A. Yes, sir.

Mr. WILSON. That is all.

REDIRECT EXAMINATION.

By Mr. BLISS :

Q. They were signed by the officer who on that day was the Acting Postmaster-General?—A. Yes, sir.

Q. Some of the questions have used the word expedition, and in every case they have spoken of increase and expedition, increase of service. Does your testimony intend to cover orders for increase of service as well as increase of expedition?—A. Yes, sir; all orders covering transportation of the mail.

By the FOREMAN [Mr. Dickson]:

Q. Do all orders emanating from the Post-Office Department require, under the law, the approval of the Postmaster-General?—A. Yes, sir.

Q. Then let me ask you, sir, could an order issued by a subordinate of that department have force or take effect without the authority of the Postmaster-General?—A. I presume not.

Q. What was the rule, sir? You spoke of orders being transferred, or copies of orders, to the Sixth Auditor before the Postmaster-General approved of them. Could they have force or take effect without the approval of the Postmaster-General?—A. No, sir; I presume not.

Q. Then the Postmaster-General is responsible for all orders?—A. Yes, sir.

Mr. BLISS. That is all.

GEORGE M. SWEENEY sworn and examined.

By Mr. KER :

Question. Were you employed in the Post-Office Department in 1878?—Answer. I was.

Q. In what branch of that department were you employed?—A. In the office of the Second Assistant Postmaster-General.

Q. In his branch; under the Second Assistant?—A. Yes, sir.

Q. In which of these branches were the advertisements prepared?—A. In his bureau; the contract division.

Q. In the contract division of the Second Assistant Postmaster-General's office, did the advertisements come under your notice at all?—A. For the section I had charge of at that time, they did.

Q. [Submitting pamphlets to witness.] Will you look at those two books and say where they came from?—A. I presume they are advertisements of the Post-Office Department, issued November 1, 1877.

Q. Have you any doubt about it?—A. No; I have no doubt about it.

Q. Those are advertisements of November 1, 1877? Were the advertisements all issued in this shape, printed as these are?—A. Yes, sir.

Q. How were they distributed?—A. Under general advertisement. There was a copy of that with three proposals sent to every postmaster in the State or Territory in which the service was located, and they were sent to all contractors and all other persons requesting them.

Q. Any person who requested a copy would get one?—A. Yes, sir.

Q. But they were sent to the postmasters. What was done then; were they posted up?—A. They were notified to post them up.

Q. They were all printed, were they?

The WITNESS. All the advertisements?

Mr. KER. Yes.

A. All printed; yes, sir.

Q. Was this a general letting or special?—A. This was a general letting.

Mr. KER. Now, I propose to offer these two books in evidence.

Mr. TOTTEN. Let us see them. Are you done examining the witness?

Mr. BLISS. No, sir; but we propose to offer those in evidence.

Mr. WILSON. [To the court.] I prefer them to get through with their examination before we put these in evidence.

The COURT. They are not obliged to do that.

Mr. TOTTEN. [After inspecting the books.] Oh, we have no objection to these documents, your honor.

Mr. WILSON. My clients say, let them go in.

Mr. BLISS. I understand there is no objection.

Mr. WILSON. I am speaking for General Brady. Mr. Hine has a right to be heard here.

[Mr. Hine made no objection to the introduction of the books in evidence.]

Mr. KER. In one of these books there is an advertisement of November 1, 1877, inviting proposals for carrying the mails of the United States in the States of Kansas and Nebraska, and in Indian and Dakota Territories, from July 1, 1878, to June 30, 1882, D. M. Key, Postmaster-General. The other is an advertisement of November 1, 1877, inviting proposals for carrying the mails of the United States in the States of Colorado, Oregon, Nevada, and California, and in Montana, Wyoming, New Mexico, Arizona, Utah, Idaho, and Washington Territories, from July 1, 1878, to June 30, 1882.

By Mr. KER:

Q. Do you know William H. Turner, one of the defendants in this case?—A. I do.

Q. Was he employed in your office?—A. He was employed in the office of the Second Assistant Postmaster-General.

Q. What special duty had he?—A. He was in the contract division, and had the office designation of a corresponding clerk in charge of a section.

Q. Corresponding clerk in charge of that section?—A. Yes, sir.

Q. Now of what States and Territories did Mr. Turner have charge?

The WITNESS. At what time?

Mr. KER. From July, 1878.

A. He had charge of the States of Colorado, Oregon, Nevada, California, and the Territories of Montana, Wyoming, New Mexico, Arizona, Utah, Idaho, and Washington.

Q. [Submitting one of the pamphlets to the witness.] That is, the Territories mentioned in that advertisement?—A. Yes, sir.

Q. Do you know Mr. Brewer?—A. I do.

Q. What was his business in the department?—A. He was a corresponding clerk in charge of the section consisting of the States of Kansas and Nebraska, and the Territories of Dakota and Indian.

Q. [Submitting the other pamphlet to the witness.] That is under the advertisement in this book?—A. Yes, sir.

Q. How long did Mr. Turner remain in that office?—A. Until June, 1881.

Q. Do you know the exact date?—A. I do not.

Q. As clerk in that office, having charge of these different States of which you have spoken, what were his duties in regard to the different routes; can you give the court and jury a description as to the duty that was prescribed for Mr. Turner?—A. By custom they consisted in performing the routine clerical work incident to the preparation of advertisements for proposals.

Q. Advertisements?—A. Yes, sir.

Q. Well?—A. The awarding of contracts and subsequent changes of service other than railway, and some mail messenger service in the States and Territories constituting his section.

Q. What was done with petitions or papers or letters that came there?—A. It would depend upon what the nature of the petition would be.

Q. In reference to a particular route?—A. If it was a petition for a change of service, change of schedule, or anything of that kind, it would go to the corresponding clerk in charge.

Q. In one of these States and Territories where petitions, letters, and applications were sent to the Post-Office Department, did they go to Mr. Turner or somebody else?—A. They would go to him; that is, if they were petitions for any change of service.

Q. Go on and describe what duty he performed in regard to the routes during the contract period.—A. He would prepare all orders, service schedules, and prepare telegrams and letters relative to the service other than those emanating from the inspection division.

Q. What do you mean by preparing orders; do you mean orders to reduce the time or increase the trips?—A. To reduce or increase the number of trips, to reduce the speed, or to change the hours or days of departure.

Q. He would do that upon whose direction?—A. The Second Assistant Postmaster-General.

Q. Where were those orders made?—A. They would be prepared in the room of the corresponding clerk.

Q. In what way?—A. On a jacket.

Q. What did the jacket inclose?—A. The papers on which the orders were based.

Q. Now, let us go back to the beginning. You say if there was a petition or an application, or something of that kind, it was sent to Mr. Turner. Now, what did he do with it when he received it?—A. It would depend altogether upon the nature of it. If it was for a change of schedule he would act upon it.

Q. Suppose it was for a change of schedule, what did he do with it?—A. If recommended to the Postmaster-General, and was a proper change to make, he would simply make the order. If it were a change of schedule, if it were an expedition, or an increase of service, he would close the petition, after briefing it in a jacket, stating the substance

of the petition, what was requested, and all the facts for the consideration of the Second Assistant Postmaster-General.

Q. After preparing a jacket, as you call it, containing a statement of what these letters or petitions or things were, would he take it to the Second Assistant Postmaster-General, or would it be filed?—A. He would if it called for an expenditure of money.

Q. For an increase of expedition, or take any subject of that kind?—A. Anything that involved an expenditure of money he would submit to the Second Assistant or his chief clerk before making any order finally.

Q. And when it came back to Mr. Turner?—A. He would carry out the directions of the Second Assistant Postmaster-General.

Q. Whatever the direction was Mr. Turner would carry it out?—A. Yes, sir.

Q. Was the direction verbal or was it a written direction?—A. Sometimes it was verbal, and sometimes it was written.

Q. Now, if it were for an increase of expedition, involving a calculation, who made the calculation?

Mr. TOTTEN. Are you asking him about the course of business, or are you asking what was actually done? What are you trying to get at?

Mr. KER. I am trying to find out the unwritten practice of this department.

Mr. TOTTEN. Why do you not ask him that? You are asking him what was done and he is telling you. How does he know that.

Q. [Resuming.] When there was something that required figures and calculations, who made the figures, the Second Assistant, or Mr. Turner, or both, or either?—A. The calculation would be performed probably by Mr. Turner or his route book clerk.

By Mr. BLISS:

Q. You used the word "briefing." What do you mean by briefing?—A. I mean stating on the back of a paper a brief memorandum of its contents.

Q. Now, suppose a letter came there upon which any order was not to be directly based, would that be briefed or indorsed?—A. It would have the State, the number of the route, the day it was received, and the name of the writer with a brief memorandum of its contents.

Q. In the course of practice there, by whom would that indorsement be made in a given section? Would it be made by the corresponding clerk of that section, or by whom?—A. Ordinarily, by the corresponding clerk, sometimes by the route-book clerk.

Q. What do you mean by the route-book clerk?—A. He copies these advertisements into the records of the department and copies all orders made on the service into the books.

Q. Do you know who was the route-book clerk at the time he was corresponding clerk in charge of the sections named?

The WITNESS. For what period; do you mean the entire time?

Mr. KER. From July, 1878, down to the time he left the department.

A. I think in the first place there was a Mr. Cattin, and subsequently Byron Coon.

Q. Are papers coming in with reference to a single route in the section kept together or separate?—A. Kept together.

Q. So that when you look for the papers in a given route you should find everything that is in the Second Assistant's office relating to that office in one place?—A. They are filed in pigeon holes containing three routes ordinarily, and all the papers for those three routes should be in that pigeon hole.

Q. In whose office is that pigeon hole?—A. In the Second Assistant's office, in the room occupied by the corresponding clerk—excepting papers pertaining to the inspection division.

Q. What do you mean by pertaining to the inspection division?—A. The records of arrivals or departures showing the performance or non-performance of service, and all cases pertaining to that. But anything pertaining to ordering new service, or requesting changes of existing service would be in charge of the corresponding clerk.

Q. These papers that you you speak of, changing schedule, and so forth, performance of service, you say go to what division?—A. Changing schedule would go to the contract clerk who would have charge of the correspondence.

Q. Anything showing how the service was performed would have to go to the inspection division?—A. Yes, sir; or the non-performance of service.

Q. What is the inspection division?—A. It is charged with seeing that the contracts are properly executed.

Q. That is in whose office?—A. The Second Assistant Postmaster General's.

Q. And distinct from the corresponding clerk's?—A. Yes, sir.

Q. That is, the corresponding clerk is attached to the Second Assistant Postmaster-General's own office, is he not?—A. They are both attached to it. The office is, by custom, divided into two divisions, a contract division and an inspection division.

Q. And the corresponding clerk is in the contract division?—A. Yes, sir.

Q. What was the course of a written order made by the Second Assistant Postmaster-General directing an increase of service or expedition after being made by him.

The WITNESS. You mean of the paper itself?

Mr. BLISS. Yes.

A. Of late years it would go the railway mail division.

Q. I mean since July, 1878?—A. I do not know. At that time the railway mail division took memoranda, but they do not at present, and, I think, have not probably for three years. They would take a note of the change of service, then it would go the journal room, be entered in the Postmaster-General's journal, from there it would go to the statistician, and from the statistician returned to the room from whence it originally came.

Q. And be put on file there?—A. Be entered on the record and filed.

Q. Filed with these papers in the pigeon-holes?—A. Yes, sir.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Will you please tell the jury when Mr. Turner took charge of that desk as corresponding clerk of these States and Territories that you have named?

The WITNESS. Named in this advertisement, do you mean?

Mr. WILSON. Yes, sir.

A. In the latter part of the year 1877.

Q. Do you know what stage of preparation that advertisement had reached when he took charge of that desk?—A. My recollection is that it was in the hands of the printer; I am not sure.

Q. What had he to do with making up that advertisement?—A. I think he simply had the reading of the proof, and may have made some

change. I do not know. But the original advertisement, I think, was not prepared by him.

Q. He knew nothing of this advertisement until it reached him for the purpose of reading the proof, as I understand it?—A. So far as my knowledge goes.

Q. Where was Mr. Turner before he went to this desk?—A. He was a corresponding clerk in charge of the States of Illinois and Iowa, I think.

Q. He had no connection at all with this section that we have been talking about?—A. No, sir.

Q. Will you tell the jury how long in advance of the letting you began to make up these advertisements?

The WITNESS. You mean in advance of the date?

Mr. WILSON. How long in advance of the issuing of the advertisement do you begin to make up that advertisement?—A. Several months. For instance, the advertisement issued November 1, would probably commence to be prepared as early as July preceding.

Q. You go on preparing these advertisements to be printed and circulated in the manner in which you have indicated?—A. Yes, sir.

Q. Do you make changes in these from time to time, as you are getting these advertisements in condition to be issued as to schedule time, the number of trips, and so forth?—A. Before they go to the printer; yes, sir; or we may make changes when the proof comes back.

Q. Altering the number of trips as originally conceived?—A. Yes, sir; sometimes.

Q. And altering the schedule time?—A. Yes, sir.

Q. And how long do you keep that up?—A. Well, we can only keep it up until the proof is sent back to the printer.

Q. But do you keep it up until it is sent back?—A. Yes, sir; if there is any occasion for it.

Q. You commence in one July to make up the advertisements for the service that goes into effect the following July?—A. Yes, sir.

Q. A whole year in advance of the service going into effect?—A. About a year.

Q. Now, you have said that the duty of this corresponding clerk having charge of the division is to have ready all the contracts after this advertisement had—

The WITNESS. No; I beg your pardon, Judge Wilson.

Mr. WILSON. Well, I beg your pardon if I misunderstood you.

The WITNESS. I said he was charged with the routine clerical work incident to the preparation of advertisements and awards of contracts, and subsequent changes of service other than railway and some mail-messenger service.

Q. Does it happen in the course of this business that after contracts have been actually entered into, and before the service begins, changes are made in the number of trips, and in the schedule time?—A. Yes, sir; sometimes. In fact the trips are quite often changed.

Q. Why is that so?—A. Because it is deemed for the interests of the service to make those changes.

Q. In other words, if you find that you have not made the trips often enough, then you increase them?—A. That fact is established; yes, sir.

Q. If you find you have made them too frequent you reduce them?—A. Yes, sir.

Q. If you find that you have made them too short you make them longer; if you find that you have made them too long, you make them

shorter?—A. No; we cannot make them longer under advertisements without a readvertisement.

Mr. BLISS. Are you questioning him as to the time after the advertisement has been made?

Mr. WILSON. I am questioning him about the course of business.

The WITNESS. We can change the hours and days on which the mail should be carried, provided we preserve the original running time. If we reduce the time, it then becomes expedition. But we cannot increase the time. For instance, a route is let upon a schedule of ten hours running time and we want to make it twelve; we cannot make twelve hours running time.

Mr. MERRICK. You cannot change the time without advertising?

The WITNESS. No.

By Mr. WILSON:

Q. I beg pardon. You cannot increase the time without advertisement. But you can make the reduction?—A. Yes, sir.

Q. You can make these changes even after the contract has been entered into and before the service begins for the purpose of accommodating the service to what you ascertain to be the public needs?—A. Yes, sir.

Q. That is the idea?—A. That is the idea.

Q. How long have you been connected with the Post-Office Department?—A. Since April, 1875.

Q. In respect of this manner of conducting the business, has there been any change in the department since you first became acquainted with it?

The WITNESS. In what particular?

Mr. WILSON. You have been giving the details now of the course of business; this manner of getting out advertisements, this matter of making increases in the number of trips, this matter of shortening the time, &c., has there been any change in the practice since you have known the department or become acquainted with the different affairs in the department?

A. The only change is where it is discovered that a schedule is too long, when it is reduced if it is discovered before the contract is made.

Q. Now, you say that they commence making up their advertisement one July for the service to go into effect the next July?—A. Yes, sir generally.

Q. Has there been any change in the practice of the department, in that regard, during the years you have been there?—A. No, sir.

Q. You say that up to the time that this advertisement goes to the printer changes are made in the number of trips, in the speed, &c.?—A. Yes, sir.

Q. Has that been changed in any way since you have known the department?—A. No, sir.

Q. You say that after the contract is entered into, and before the service goes into effect, it is the practice to increase the number of trips or diminish the schedule time, if you come to the conclusion that the public need requires it. Now, has there been any change in that respect since you have known the department?—A. No; only as to the method of getting the expedited time. At present it is by readvertisements.

Q. When did that go into effect?—A. I suppose to a greater or a less extent it has been the practice ever since I have been in the department.

Q. Ever since 1875?—A. To some extent. That is if a route is ad-

vertised, and it is found that it was not properly advertised, it would be embraced in the miscellaneous advertisement.

Q. That has reference to the miscellaneous advertisement?—A. That takes up such routes as are not embraced in the general advertisement, by omission or error, or any change that was found to be advisable afterwards could not be effected without readvertisement.

Q. How long has Mr. Brewer been in the department?—A. I do not know the date when I entered it. I think he had been there a number of years before.

Q. And he occupied the same relations to Kansas, Nebraska, Dakota and Indian Territory that Mr. Turner did to these others?—A. Yes, sir.

Q. Mr. Turner had nothing to do with Nebraska?—A. Not to my knowledge.

Q. Who prepared the advertisement for that section—Nebraska, Dakota, and Indian Territory?—A. I think Mr. Brewer did.

Q. Now, when anything came to this division that Mr. Turner had charge of having relation to increase of service, or expedition of service, and matters of that sort, you say that that was put in a jacket and that applied to that particular route to which it referred?—A. Well, if it was a case that unless shown that we were satisfied that it did not deserve any attention, he would brief it, put it in a jacket having the number of the route, the termini distances, frequency of service, the name of the contractor, and the rate of pay, stating the substance of what was requested by him, or by whom recommended, and submit that, with the cost of making the desired change, to the Second Assistant Postmaster-General.

Q. Now, on this jacket there was simply a brief memorandum, stating the date of the communication, or petition, or whatever it might be, the writer of the letter, if it was a letter—just a brief statement of that was in that jacket?—A. I can illustrate it better by a piece of paper. [Taking up a piece of paper.] Suppose this would be the petition. It would be folded and indorsed with the contents of it. Suppose it would be referred and recommended by a Senator or Representative. That would then be inclosed in a jacket and the facts stated—that such a paper, being the paper inclosed, was referred by such and such a person, requesting such and such change, that the cost of that change would be so much, and that would be submitted to the Second Assistant Postmaster-General.

Q. Now, there are a great many of those petitions. Is not the statement on the back of the jacket a very brief one?—A. Yes, sir; very.

Q. It is a very brief synopsis of what is inclosed in that jacket; now, suppose that there were a dozen petitions, and papers, and letters, they would all be inclosed in that same package and a little brief that was on the back would necessarily refer to all of those petitions, and letters, and so forth, that were inclosed in that jacket?—A. Yes, sir; it would simply state that so and so referred the inclosed papers and letters, or words that effect, requesting such a change, then the other facts in connection with the case as to the cost of the desired service.

Q. In this jacket you put every petition, letter, and other paper having relation to the increase or expedition of the service, no matter when it comes?—A. Oh, no, sir; not necessarily. If a paper came in making that request after it had been already granted, it might or might not be put in that jacket; but it would be put in the same pigeon-hole with the jacket.

Q. Before the expedition or increase is granted, are the letters and

petitions asking for that expedition and increase put in that jacket?—

A. Yes, sir.

Q. Very well. Now, on the jacket do you refer specifically to each one of the letters and petitions that is inside of that jacket?—A. No, sir.

Q. You simply refer in a general way to the general contents of the whole?—A. Yes, sir.

Q. That is it. Now, will you just explain to me whether or not there could be letters and petitions, &c., taken out of that jacket and still there would be nothing on the jacket to indicate that those papers had ever been in there or had been removed?—A. Well, it would depend upon how many papers there were in the jacket, and which one of the papers it happened to be; for instance, if it were one having the reference on and that was taken out, it would be missed. If, say there were half a dozen petitions requesting the same thing, and only one of them was indorsed by the person referring them, and the jacket would be made up stating that the petitions inclosed would be addressed so and so, not stating the number of petitions, one of them could be taken out and it not be discovered?

Mr. MERRICK. Or the indorsement might be wrong; the indorsement might be false?

A. Yes, sir.

By Mr. WILSON:

Q. [Continuing.] Where have these papers been that belong to your division during the past twelve months; have they all been in their proper place?—A. They have all been in the department. They have not all been in my room.

Q. Where have they been?—A. The inspectors of the Post-Office Department have had some of them.

Q. Has anybody else had any?—A. No one ever had them out of the room not connected with the department to my knowledge.

Q. Who has had them?—A. The inspectors of the Post-Office Department have had a number of them.

Q. Give the names of the inspectors who have had them?—A. Inspector Woodward and Mr. Gibson have had them. In fact I know of no others.

Q. Where have these papers been kept when they have been out of your room, so far as you know?—A. I presume in the inspector's room.

Q. Where is that?—A. In the Post-Office building, from 22, floor B.

Q. How long were they down there?

The WITNESS. Which particular papers?

Mr. WILSON. I am talking about these papers that you say were taken out of your room.

A. Some have been away a number of months, and some not so long. Some were taken out last summer or last fall.

Q. Have they been returned yet?—A. Some of them have.

Q. Any of them not returned?—A. Some of them have not been returned.

Q. Were any of them missing when you first took charge of that division?—A. No, I cannot say that any were missing. Before I took charge of it the oaths of the contractors had been removed to the safe in the chief clerk's room. I do not know of any papers being missing.

Q. Do you know how many persons in all have had access to these papers since they went away from your room?—A. I only know when I delivered them up that I charged them to the person who got them.

Q. To whom did you charge them?

Mr. MERRICK. One moment, if your honor please. As to this question propounded by brother Wilson, while the whole testimony would have to come out and will be brought out, we will offer it ourselves at the proper time. It is not a question relating to the course of business in the department, but relating to the custody of specific papers out of the ordinary run of the business of the department, and is not therefore proper cross-examination. I submit the objection.

Mr. WILSON. I withdraw the question for the present.

Q. What papers are there that go to the inspection division now?—

A. They relate to the performance of the service; the manner in which it was performed.

Q. All matters appertaining to the performance of their contracts by the contractors go to the inspection division?—A. They see that the orders issued by the contract division are carried out, or, if not carried out, that such fines and deductions—

Q. [Interposing.] Now, then, the reports as to whether the contractors perform their service according to the terms of the contract go to the inspection division?—A. Except reports of a total suspension of service.

Q. I am not talking about where a contract is abrogated entirely; but those cases where the contractor does not perform the service according to the contract?—A. Allow me to explain: If the contractor performs no service whatever not in pursuance of an order from the department then that notice would go to the corresponding clerk, and he would authorize temporary service. All other papers showing non-performance of service would go to the inspection division.

Q. Who was the head of the inspection division during the administration of General Brady?—A. Samuel M. Lake.

Q. Who is at the head of it now?—A. John Green.

Mr. WILSON. That is all.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. You said when there was an increase of speed before the time fixed for the commencement of service that in such case the practice was to advertise?—A. Not the uniform practice. It is now, so far as I know, the uniform practice, and has been the practice to a greater or less extent ever since I have been in the department; not uniformly.

Q. There have been exceptions down to recently, and recently it has become a uniform practice?—A. So far as my knowledge goes.

By the FOREMAN [Mr. Dickson]:

Q. I desire to ask you a question on a subject that may become important in this case. You referred to a jacket and to briefing thereon a memorandum relating to the contents of papers contained therein. Now, what was the rule? Was there any method, manner, custom, or rule by which that memorandum should be made upon the jacket? For instance: I hold a paper here, a petition. It is inclosed in a jacket. Upon the outside of the jacket is written a statement as to the contents. Was there any rule by which that statement was made, or was it left to the clerical judgment and discretion of the clerk?—A. Aside from the caption of the jacket it was left to the discretion of the clerk.

Q. Was it not supposed that its contents would give a clear and complete statement of what was within?—A. Of all the material portion; yes, sir.

Q. But it was discretionary with the clerk as to what he would write?—A. Of course he was supposed to set forth the facts clearly as they

were within, that is, whatever the object of the request was he would set out briefly on the jacket. The jackets are a printed form having the date, State, number of the route, termini, length, frequency of service, name of the contractor, and annual pay. Then immediately below that you state whatever is requested. The manner in which that is stated of course differs just as different men differ in expressing their thoughts.

Q. But it is supposed to contain a clear statement of the contents of the paper?—A. Yes, sir; of the material part of it. For instance, a petition would request an increase of service, and if there were many reasons given it would not be necessary that all those reasons should be stated, only the material reasons.

Q. Let me put a supposititious case. Suppose you were looking for a record or a paper in some portion of the department that you are now connected with, would you on obtaining it accept the statement made upon the envelope, the brief memorandum referred to, as a true statement of the contents of the envelope, or would you refer to the papers contained therein?—A. I would look at the papers contained in the jacket.

Q. Then you would not accept the statement upon the envelope as a true statement?—A. As to the object of the request I would consider it a true statement—as to what was requested by the within petition. But if I wanted to know where the petition was from, &c., I would examine the paper itself.

Q. There is no rule, then, in the department; it is discretionary with the clerk who does the work?—A. There is no special rule.

By Mr. BLISS:

Q. Except I understand it is his duty to make, as far as he briefly can, a correct statement of the material portion of the contents of the paper?—A. Yes, sir.

Q. And he might misjudge as to what was material?—A. Yes, sir.

By Mr. TOTTEN:

Q. It is more as a guide than anything else, to show what the nature of the papers inside of that jacket is?—A. Yes, sir.

Q. More for the purpose of convenience for the man who is looking at it when he is hunting up information, so as to get inside and find out the particulars?—A. He would take it as an indication of what was requested, and the facts in the case.

Q. If you were to take action upon a case, and took that envelope out for the purpose of finding what to do, you would not be guided by the indorsement on the envelope?

Mr. MERRICK. I object.

Mr. BLISS. It is not a question as to what a given witness would do.

Mr. TOTTEN. He is the man who is doing it.

Mr. BLISS. No; he is not. I am asking him about the course of business.

The COURT. Although the question was objectionable in form, I understood it as relating to the course of business.

Mr. TOTTEN. I will put it on that ground.

Mr. MERRICK. There are two objections to the question; first, as to the form, and as to—

Mr. TOTTEN. [Interposing.] I withdraw the question.

Mr. MERRICK. You ought to have withdrawn it before.

Mr. BLISS. [To the witness.] That is all.

At this point (3 o'clock and 30 minutes p. m.) the court adjourned till *morrow morning* at 10 o'clock.

FRIDAY, JUNE 9, 1882.

The court met at 10 o'clock a. m.

Counsel for the Government and defendants being present.

WAYNE MACVEAGH sworn and examined.

By Mr. MERRICK :

Question. What is your full name ?—Answer. Wayne MacVeagh.

Q. Of Philadelphia ?—A. Of Philadelphia.

Q. Will you please state to the court and jury when you entered upon the office of Attorney-General of the United States.—A. On the 8th day of March, I think, 1881; and left on the 14th of September, 1881, if you wish that date.

Q. During your service in that office, did you meet with a man named M. C. Rerdell ?—A. Yes, sir.

Q. Do you know such a person now ?—A. Yes, sir.

Q. Is he in court ?—A. I saw him a moment ago. [After looking around.] Yes, sir; he is here.

Q. Where is he ?—A. He is sitting behind Mr. McSweeney and Mr. Ingersoll.

Mr. MERRICK. Will Mr. Rerdell please stand up a moment ?

[Mr. Rerdell arose.]

The WITNESS. That is Mr. Rerdell.

Q. Did you have any interview with Mr. Rerdell during the period of your service as Attorney-General in relation to what is known as the star-route proceedings or the star-route cases ?—A. Yes, sir.

Q. Now, sir, without any——

Mr. WILSON. [Interposing.] I desire to ask a question: When, Mr. MacVeagh ?

The WITNESS. In June, 1881.

Mr. MERRICK. Ah, yes; I was going to cover that point by my next question, which was intended to be this: That without special interrogatories as to time and place and subject of conversation, will you please be so good as to state, in your own way, with particularity, the time, the place, and all that transpired.

Mr. WILSON. To that we object, your honor.

The COURT. What is the ground of your objection ?

Mr. WILSON. The ground of my objection is, as to the time when it occurred, that it is not competent testimony against Mr. Brady and Mr. Turner, whom I represent.

The COURT. I do not know yet what they propose to prove.

Mr. WILSON. They are proposing to prove what Mr. Rerdell stated to Mr. MacVeagh on the 8th or about the 8th of June, 1881, long after any of the matters occurred which are alleged in this indictment, and after the acts had been done as set forth in the indictment, and after everything had been accomplished of which complaint is made in this indictment. I submit, if your honor please, that it is not competent testimony as against the parties whom I represent.

The COURT. The court will call upon the counsel for the Government to state what they propose to prove.

Mr. MERRICK. We propose to prove an interview between the Attorney-General and Rerdell in reference to the subject-matter of the inquiry here. I will, if the court directs me, be a little more specific in reference to what I expect to prove, although I do not know that I can state everything that transpired in that interview.

The COURT. You can state what you expect to prove.

Mr. MERRICK. I expect to prove by Mr. MacVeagh that Rerdell admitted to him that he was in a combination with Dorsey, Brady, and others of these defendants to obtain mail contracts, and by various fraudulent devices to have the pay stipulated for in those contracts enlarged by the improper exercise of official authority on the part of Brady. How far this testimony may affect Brady, and be competent as to Brady, is one question, and different from the primary question presented by the inquiry now made of the witness. If it is competent for any purpose in the case, I presume the court will, of course, admit the testimony, and by direction to the jury, if it is incompetent for some purposes, limit it to those purposes to which under the law it is properly applicable. That it is competent for some purposes is apparent to your honor, and needs no argument or elucidation from me. Now, my learned brother says that this was long after these parties had obtained and were in the enjoyment of the fruition of this criminal conspiracy. That is a matter to be inquired of hereafter. I will say to your honor that there seems to be a misapprehension prevailing on the other side in regard to the character, the beginning, the termination, the duration, the time of formation, and the materiality of those subjects in reference to a conspiracy. A conspiracy is a continuing thing, and if in an indictment I allege that it was formed on a certain day, and it existed long subsequent to its original formation, it is all that the law requires. Every day of its existence is a repetition of the criminality of its original organization, and it continues down as long as the subject-matters to which it relates continue subject to the control and authority, or can be used for the benefit of the conspirator. I think your honor will find that this conversation occurred during the continuance of the conspiracy, and was the effort of one of the conspirators, of a paroxysm of penitential appreciation of his error, to get out of the conspiracy, followed by a sort of supplemental effort to bring his friends who were in the conspiracy out of it also, and, by acknowledging errors past, obtain possible indemnity for them, or obtain security against punishment for them, or some other motive; certainly, to prevent the accumulation of contemplated crime in the future. Now, this is the interview that I propose to offer, and I have sufficiently stated the object to the court. I think your honor appreciates the circumstances surrounding the interview.

Mr. TOTTEN. If your honor please, my learned friend and I do not agree as to his definition of a conspiracy. A conspiracy such as this is, is not a continuing thing. The object of introducing declarations of this defendant of course is to have some kind of an operation upon the minds of the jury. Of course the learned gentleman knows very well that the confessions of one man in the conspiracy, made long after all the events charged took place, are not competent testimony as to anybody else relating to that indictment. My learned friend says this unquestionably is proper testimony for some purposes in this case. That I deny. This is a charge of conspiracy under section 5440 as amended in May, 1879. It is not a common-law conspiracy. It is an entirely different offense. It is a statutory offense, and it is none other. Your honor has heard something about this before. Now it is sought to introduce the so-called confessions, or admissions, of one of the parties charged in this indictment with having committed an offense in 1879, which confessions or admissions were made as long after as June 8, 1881. For what purpose can this confession be introduced? How is it competent? Against whom is it competent? It is certainly not competent, as your honor has declared on three or four different occasions

during the continuance of this trial, against anybody outside of himself. The confessions of no man can be taken to criminate somebody else, unless they were acting in conjunction at that time, and the man who made the confession was the agent of the other parties. Now can this testimony be introduced as to Rerdell? Can Mr. Rerdell be convicted upon his own confessions of having been guilty of a conspiracy with himself? It requires at least two persons to carry on or form a conspiracy. Could Mr. Rerdell do that alone? June 8, 1881, your honor will remember, was a long time after the reform administration took possession of the Post-Office Department. That reform administration went into possession of the Post-Office Department about the 8th day of March, 1881. So that here, long after, whilst the investigations of these so-called crimes were going on, Mr. Rerdell, for some purpose of his own, possibly, went and told somebody something about himself and about others. How can that testimony be taken, long after these men were out of office, long after the transactions took place, long after Mr. Dorsey's contract had been either closed up or cleaned out in some way? How can the confession of Rerdell, who was a mere clerk to some of these gentlemen engaged in this business, affect them in any way?

Mr. MERRICK. I think you are under a mistake. These contracts were still going on.

Mr. TOTTEN. Probably they were, and may be yet; but they were being slaughtered every day for the purpose of depriving the people of the West of their mail facilities, and for the purpose of showing a reformation in the expenditure of public money appropriated for the purpose of giving those people the facilities of the mail. Now, what good can the confessions of Rerdell do here, unless it is to aid the gentlemen in carrying out their charges against these men by throwing dirt upon somebody? I submit to your honor, as a plain question of law, that the confessions of Mr. Rerdell cannot, by any sort of possibility, affect anybody but himself; and if he could be convicted of a conspiracy with himself then, your honor, the confessions may be of some account. Unless the law will allow him to be convicted of entering into and carrying on a conspiracy with himself, these declarations of his, made long after the conspiracy, are utterly incompetent. We are not without authority, your honor, upon this subject of conspiracy. I say that the old common law of conspiracy has nothing to do with this transaction, nothing to do with this indictment. We are here under a statute governing the question of a conspiracy to defraud the United States. The Supreme Court in the case of *Hirsch* made several declarations that are important upon this question, and they have been followed by other decisions as long ago as the 11th of Blatchford. The doctrine is laid down there in a criminal proceeding under that statute that the crime is the conspiracy. It is the unlawful combination.

The COURT. What case do you refer to?

Mr. TOTTEN. I am alluding to the case of *The United States against Hirsch*, 100 United States, page 33. Mr. Justice Miller delivered the opinion of the court in that case. He gives several declarations, your honor, which are unquestionably the accurate construction to be put upon that statute. He says:

The gravamen of the offense here is the conspiracy. For this there must be more than one person engaged. Although, by the statute something more than the common-law definition of a conspiracy is necessary to complete the offense, to wit, some act done to effect the object of the conspiracy, it remains true that the combination of minds in an unlawful purpose is the foundation of an offense, and that a party who

did not join in the previous conspiracy cannot under this section be convicted on an overt act.

Now that shows your honor conclusively that brother Merrick is wrong. The moment this conspiracy is concluded between the men, the moment they have entered into the unlawful combination for the purpose of perpetrating a fraud, and some one or other of them perpetrates an act to carry into effect that design, then the conspiracy is complete. And when the conspiracy has been completed and the proof has been made the liabilities of the parties under this statute arise instantly. It does not make any difference whether they steal 10 cents in pursuance of the conspiracy or \$10,000,000; not a particle. The law does not take into consideration the result to the Government. The law takes into consideration the unlawful combination of minds. They meet together, they combine together in some way without meeting, or they have a common design in view, and some one of the conspirators does some act. That settles the case and that concludes the conspiracy and it is a consummated offense. Now, your honor, when that thing is done that is the end of it. There are no relations existing between these parties as agents and principals. The doctrine does not arise which authorized the testimony or the confession or the admission of one of them to impeach the veracity or the standing or the good name of any other. Now, your honor, I submit that for no purpose can this statement be received as competent testimony in this case.

Mr. COLE. If your honor please, I do not wish to add to the argument that has been made on behalf of Mr. Rerdell, I wish to object to the admissibility of the testimony. If not admissible as to any of the other defendants——

The COURT. [Interposing.] Oh, I understand it to be objected to on behalf of all, even on behalf of Rerdell.

Mr. COLE. Yes, sir.

The COURT. Now, although this is a statutory proceeding——

Mr. MERRICK. [Interposing.] Allow me to say a word. I do not propose now to argue the question as to whom the testimony may be applicable——

Mr. INGERSOLL. [Interposing.] There are some authorities I would like to show the court upon this question.

The COURT. Very well.

Mr. INGERSOLL. I have just sent for a book or two that I think will throw some light upon it. In the first place, I suppose it will be admitted that the declaration of a coconspirator is not evidence against the others unless it is made in connection with some act done for the purpose of accomplishing the object of the conspiracy.

The COURT. You need not send for any books on that point.

Mr. INGERSOLL. I need not argue that. That is clear. Now, it will hardly be contended that the confession by one of the conspirators was an act done to effect the object for which the conspiracy was formed.

The COURT. Certainly not.

Mr. INGERSOLL. The next point I make is, that before the confession of any conspirator can be taken the fact that a conspiracy existed must be first proved. That must first be established. A man comes and confesses that he has a stolen horse. He cannot be convicted unless there is some evidence that a horse has been stolen. That must be established otherwise. There must be somebody to show that somebody has lost a horse, and that a horse is missing somewhere. In this case before the confession of anybody can be taken as testimony the fact of the conspiracy must be otherwise established. I will now call the

attention of the court to 39th Barbour, 403; also 47th Barbour, 134; and 33d Barbour, 165. The rule stated in 33d Barbour is, that a fraudulent combination or conspiracy must be established before the declaration of one of the conspirators may be given in evidence against another for any purpose.

There is the case of *Cuyler vs. McCartney*, 40 New York, 227, from which I will read:

If mere proof of concurrence in the execution and delivery of the assignment established a common intent within the principle making the acts and declarations of the conspirators, while carrying their common design into execution, evidence against each other, then the rule first above stated is made a nullity.

Now, I will read the rule:

WOODRUFF, J. I concur fully in the proposition that after the execution and delivery of an assignment for the benefit of creditors, and the entry of the trustees upon the performance of the trust, by taking possession of the assigned property, the assignor cannot, by his declarations or admissions out of court, invalidate the assignment or furnish evidence of his own or the trustee's fraudulent intent in making or receiving it, for the purpose of defeating the claims of the trustees to hold and administer the property according to the trust.

It is not and cannot be successfully claimed that mere proof that assignor and assignee have concurred in an assignment providing for the payment of debts establishes a conspiracy within the rule. Delivering and accepting such an assignment establishes a common intent, but not a common intent to defraud. If mere proof of concurrence in the execution and delivery of the assignment established a common intent within the principle—making the acts and declaration of the conspirators while carrying their common design into execution evidence against each other—then the rule first above stated is made a nullity.

Now, these are to be statements of facts, or pretended facts, that took place before the assignment was made, but not a declaration accompanying one of those acts; not a declaration made at the time. The words were no part of the circumstances of the deed, and consequently cannot be received for any purpose.

No sooner is an assignment made than the assignor may, by his acts or declarations out of court, defeat it, if he be dishonest enough to collude with any creditor, or to treat any dissatisfaction with the trustees and defeat it by such means.

To make such admissions or declarations competent evidence, it must stand as a fact in the case, admitted or proved, that the assignor and assignees were in a conspiracy to defraud the creditors.

You have got to prove that first. That must be established by other evidence; and after it is established then any man can come in and confess that he assisted; that he was a party to the crime. But you must establish the existence of a conspiracy first otherwise.

If that fact exists then after it has been established the acts and declarations of either made in execution of the common purpose and in aid of its fulfillment are competent against either of them, the principle of its admissibility *assumes that fact*.

It necessarily follows that those declarations or admissions cannot be received to prove the fact itself. This is quite plain. A species or form of evidence which is in its nature inadmissible, unless some prior or other fact is proved, cannot be received to establish the fact, proof of which is an indispensable condition of its own admissibility.

Now it seems to me that a better principle could not be laid down and could not be more clearly expressed than in this case. I will call the attention of the court to one other case, that of *The People vs. The Parish*, Denio's Reports, vol. 4, page 156:

Another ground has been suggested for getting rid of the exceptions, to wit, that it only presents a question upon the order of evidence.

That is the old way of getting in incompetent evidence by saying that after awhile we will connect it; we will build our house commencing

at the top of a chimney, and we promise the court to have a cellar in due time. Let us see if that can be gone into in this case.

Which, as a general rule, rests in the discretion of the judge; but I doubt whether it is within the discretion of the judge to receive in evidence the acts or declarations of a supposed agent or joint conspirator, before either direct or presumptive evidence has been given to establish the agency or combination. It is not, however, necessary to go into that question at this time; for we think the error was cured by withdrawing the declarations of Hadden from the consideration of the jury.

Now the court will remember that in a case like this, Rerdell cannot possibly convict himself by his declarations unless he also convicts somebody else. It being a crime that one man cannot commit, if his declaration is good against himself, it is only good because it can establish the guilt of at least one other person; and if that declaration cannot by any possibility establish the guilt of any other person, then by no possibility can it establish his guilt. If it cannot establish his guilt, then it is not admissible until the fact of the conspiracy has been established. Then his confession may be admitted to show that he was a party to it. As to any other crime, I still insist that it must first be established that the crime has been committed, and the confession of no defendant can establish the commission of the crime. That must be established otherwise. He can simply say that he was the man; but he cannot establish the commission of the crime by a confession. Now, then, I object to this, first, that it was not made for the purpose of carrying out the conspiracy. They do not pretend that it was. Second, no conspiracy having been established, it certainly is not competent. It is not competent as against him until they have established a conspiracy; and now I wish to say that in my judgment——

The COURT. [Interposing.] Just upon that point I should like to hear you a little further. It is very true that at least two are necessary to constitute the crime of conspiracy. But if two or more be indicted and a conspiracy be established as between one and others, whether they are included in the indictment or not, one may be convicted.

Mr. INGERSOLL. I do not understand it exactly that way. I understand this: That if the indictment sets forth that they conspired with certain persons, naming them, then you have got to show that they did conspire with one or more of those persons; but if the indictment says with certain persons unknown, then you can establish a conspiracy with persons outside of the indictment; not otherwise.

Mr. MERRICK. This indictment says, "And other persons unknown to the grand jury." It specifies certain of them.

The COURT. Is it not true that one of several alleged conspirators may be convicted and others acquitted?

Mr. INGERSOLL. No, sir; not all acquitted, but that one. It takes two to make this offense, like several other offenses in the world; and where one admits that he committed the offense, otherwise than by that confession, the offense must be established. Now admit that this man has said that he conspired; that he admits that he conspired; that he made that admission not in connection with the conspiracy, but outside of it. He admits it. Now, suppose that is all the evidence in this case. Nobody else can be convicted, because that is not evidence against them. Well, then, can he be convicted? Certainly not, because he cannot be convicted without somebody being convicted with him. Conspirators go in pairs, and consequently he is only one of a kind and he cannot be convicted on his own testimony. Even if he swore it in court he could not be convicted. Now, in 14th Ohio State Reports, 238, the case of *Clawson vs. The State*, the court says:

The question still remained, whether the declarations of William Clawson, though inadmissible against the prisoner as evidence of the *corpus delicti*, are not, nevertheless, admissible as evidence of the existence of a conspiracy to commit the crime charged, and thus lay the foundation for the admission in evidence against the prisoner, of other declarations by conspirators.

Now, that is very well stated. It seems to cover our case.

On this question there is a dearth of cases. The elementary books refer to but one—Hardy's case, 24th Howell's St. Tr., 453; and I have been able to find no other. In that case two of the five judges seemed to have been of opinion, that the mere declarations of a person who admitted himself to be a party to a conspiracy might be admitted in evidence against another party to prove the existence and nature of the conspiracy; but the majority of the court held such declarations to be inadmissible to this purpose, unless they were in themselves acts, or were accompanied by acts, in furtherance of the common criminal object.

And that is exactly as I stated it in the first place.

And all the leading elementary writers on the law of evidence are decided in the expression of their opinions that evidence of such declaration is inadmissible, except as against the party by whom they were made.

And I say on this case they are not evidence against him unless a conspiracy is established otherwise.

The existence of a conspiracy being first established—

And that is the reason I want them to show first that this conspiracy existed—

the principle on which the acts and declarations of other conspirators, and acts done at different times, are admitted in evidence against the persons prosecuted, is, that by the act of conspiring together, the conspirators have jointly assumed to themselves as a body, the attribute of individuality, so far as regards the prosecution of the common design; thus rendering whatever is done or said by any one, in furtherance of that design, a part of the *res gesta*, and therefore the act of all. It is the same principle of identity with each other that governs in regard to the acts and admissions of agents when offered in evidence against their principals, and of partners against the partnership.

And the decisions are that if A and B are in partnership, and afterwards dissolve, that B cannot by any admission or confession substantiate a debt against the partnership; that neither of the partners by any act or deed after that can establish the liability of the partnership. If it is so in simple common civil matters, how much more should it be so in criminal matters, and especially in a Government case where maybe there are indictments about to be found against many people, and where the Department of Justice, holding aloft the equal scales, says to any rascal, "If you will bear testimony against some particular person we will release you;" where that perpetual bid is held out to-day to every man about to be indicted, or who has been indicted, "If you will only come before a jury and swear somebody else into the penitentiary, the chain shall fall from you." That being the case, how essential it is that the rights of all defendants should be guarded, and should not be put in the jeopardy of perjury, bribery, and subordination. That is the reason that I insist upon this doctrine.

But the reasons on which this principle rests are wholly wanting, and the principle can have no application to the case where the mere declarations of a stranger, not in furtherance of any design common to himself and the prisoner, are offered in evidence to prove the fact of conspiracy. And unsanctioned as such declarations always are by the great tests of truth, to wit, the obligations of an oath, the process of cross-examination, and the restraint arising from the personal presence of the accused, we are of opinion that their admission is unwarranted by any sound principle, and would be dangerous in practice.

Now, the question here simply is, whether the statement of a man

who says he conspired, and who says that not under oath, who says that where he cannot be cross-examined, who says that not in the presence of the person or persons he seeks to charge with a crime, shall be given to a jury for the purpose of prejudicing the case of other defendants; whether or not the court in the exercise of its sound discretion will not say to the prosecution, "Before I will allow you to smirch the other defendants, before I will allow you to put a stain upon their case by this pretended confession, whether real or unreal, you must first establish the fact of the conspiracy."

Now, that is all I ask. Let them first establish the existence of a conspiracy. And the court, in determining where this case shall commence, has a right to say to the Government, "You must first establish that fact before you stain the reputation of anybody; this is simply hearsay testimony; this cannot convict one of these defendants, and it cannot, by any possibility, convict the man who made the confession unless one or the other of the defendants is also convicted." Now, then, I ask the court in this case to hold the Government to strict accountability by the rule, and let them first establish the existence of this conspiracy. I know and understand how it is. When a great many people are being indicted there is always somebody to come forward and say, "Now, if you will let me off, I will tell; I will make a confession; the thing is all over and has been for years, but I don't want to go to the penitentiary; I don't want to take my chances. Now, if you will let me off I will tell; or, if you will do something else—if I can get a claim passed I will tell." Now, what I want is for the court to hold them strictly to the doctrine that they must establish this offense, this misdemeanor, this crime, by other testimony first.

Mr. MERRICK. I think the authorities read by the counsel to the court fully answered the position he assumed before he commenced to read them; and before I refer to them I will make one or two——

Mr. INGERSOLL. [Interposing.] There is another case to which I will call attention, 63d New York, 92, which is a very clear case.

Mr. MERRICK. Mr. Totten stated to your honor that this admission of Rerdell which we propose to prove and expect to prove was made after the final consummation of the purposes of the conspiracy as we charge it, and after the disbanding of the conspirators.

The COURT. But, Mr. Merrick, suppose it was made during the existence of the conspiracy, as charged in the indictment. Then was this confession an act done or something said in pursuance of the plan of the conspiracy? If it was not, then as to the case of the others the confession would not be evidence any more than it would be evidence that the conspiracy had closed. In order to bind a fellow conspirator by the confession of another, it must be some act of his or some declaration of his made in pursuance of the plan and object of the conspiracy; that is, after the conspiracy has been shown.

Mr. MERRICK. Yes, sir; I appreciate the question that your honor has propounded, but I was about to state, to correct what might possibly be an erroneous impression produced on your mind by the statement of Mr. Hine, that at the period indicated by Mr. MacVeagh as that at which this statement was made by Rerdell, this conspiracy was still flagrant.

The COURT. Well, suppose it was?

Mr. MERRICK. Well, I am going on. That the contracts were still in existence, not ended, and the parties drawing money on them. Now, we cannot tell exactly, until we hear the testimony, how far that dec-

laration may have been an act in furtherance of the conspiracy. I do not know that it was in furtherance of the conspiracy.

The COURT. But then you must have some evidence that there was a conspiracy. Before a declaration or an act could be evidence against the others, at any rate there must have been given some *prima facie* evidence of the existence of a conspiracy.

Mr. MERRICK. I was coming to that presently. It is out of my order a little. Your honor must draw this distinction: that before the declaration of one conspirator can be used, probably, as evidence against the other conspirators, if it is simply a declaration, there must be some proof of conspiracy, but if the declaration be in the nature of an act done in execution of the conspiracy, the declaration comes in evidence, not as a confession or as an admission, but as an overt act in furtherance of the conspiracy, and raises the inquiry whether the act was done to promote a conspiracy, or for what was it done, and leaves counsel, court, and jury to reason to a conspiracy from acts done in apparent execution of some common design. Now, you cannot prove a conspiracy ordinarily by showing that the parties met around the board and there concocted a plan, and either declared its arrangements in detail or wrote it down; but in conspiracy, which is a secret arrangement, done in the dark and away from human observation, has to be proved ordinarily, if proved at all, by circumstantial evidence, and where we find four or five parties doing certain acts which are in the relation, each act as a co-ordinate of the other act, and each by their combined effect produce a common result, and any one of which would have been ineffectual for the largeness of the result accomplished if done alone and without the others. The inference of a common design and combination to do the several acts to produce the large result becomes an irresistible conclusion of logic according to the operations of the human mind. And, therefore, before you prove a conspiracy, by what means I know not, according to the language of the other side, you introduce the acts of the parties one and another tending to the execution of a common design for the purpose of showing the common design under the operation of that principle and rule of common sense, that he who does an act that produces a result is presumed to intend the result his act produces. What the learned counsel refers to when he says that the Government is holding out inducements to every rascal to testify, I do not know. If any inducements have been held out to the rascals whom he represents I am not aware of the fact, and that argument and the circumstances under which the declarations or statements were made is before the court and jury. I apprehend that your honor will find when the testimony is given that the counsel may have been misled, but is certainly erroneous in what he states here to-day.

Now, whether this be testimony when it comes out against the other defendants or not, we can only tell when the testimony is in, and, as I said to your honor, I do not propose to discuss that question. "Enough for the day is the evil thereof," and enough for this inquiry is at present the question whether it is admissible for any purpose, and if so, your honor may admit it for that purpose. If, subsequently, it is found to extend to others, your honor may say it is applicable to some other purpose. or your honor may admit it generally, and say afterward that it is only applicable to a particular purpose. Now, I cannot comprehend how any lawyer should advocate the proposition that the confession of a defendant in an indictment for a conspiracy is not just as admissible against himself as his confession in any other transaction, case, or crime. It is true there must be two to conspire, but it may also

be true that you can only prove it by competent evidence as against one. And there is no better illustration of that than in the case where two are indicted, and one confesses the crime and the court says this confession is proof as against the confessor, that A, the confessor, and B did conspire.

The COURT. Is that a correct proposition ?

Mr. MERRICK. Wherein is it defective ?

The COURT. Is it not a general rule that the *corpus delicti* has to be established before a confession can be received ?

Mr. MERRICK. No, sir ; a confession comes in at any time, and is the very best of evidence. The body of the missing dead man may never be found, but the living assassin——

The COURT. [Interposing.] But you would have to prove that he was missing a good while.

Mr. MERRICK. No, sir ; I need not. Pardon me, your honor, one moment. The living assassin has time after time been convicted on his own confession, and his confession alone, when murder, which it is said will speak from the ground, speaks from the smitten conscience of the murderer, and from no other proof.

The COURT. I think you are mistaken.

Mr. MERRICK. No, sir ; there are numerous cases of that sort.

The COURT. I think the contrary proposition is laid down in all the books that murder cannot be proved by a confession.

Mr. MERRICK. I have never seen it, your honor. It may be so. I am not aware of it. I have not seen any authority produced to-day to that effect, and I know that I have seen authorities of the character to which I now refer, and I presume that cases frequently occur under your honor's own observation where the confession of the parties is admissible before the *corpus delicti* is established. The *corpus delicti* must be proved, I admit. But the question here is, not that it must be proved, but how to prove it.

The COURT. But the *corpus delicti* is not proved by the confession.

Mr. INGERSOLL. That is the doctrine.

Mr. MERRICK. Well, I suppose I must unquestionably admit it. When your honor stated it I felt compelled to deny it, and I still, so far as your honor's statement is concerned, beg leave to question it.

The COURT. You have a perfect right to contest the point with me.

Mr. MERRICK. Yes, sir ; with all due respect to the court, of course. Now, a confession is regarded as the very best of evidence when voluntarily made, and I have seen no authority to the contrary. The authority that the counsel read, which seems to be the principle one that he referred to, contains this statement ; I refer to the case of *Clawson vs. The State*:

And all the leading elementary writers on the law of evidence are decided in the expression of their opinions that evidence of such declarations is inadmissible, except as against the party by whom they are made.

Now, your honor asks where there is an indictment of several conspirators cannot one alone be found guilty. The counsel, in stating his proposition, said that where the indictment was as to others unknown it could be, but where they were known it could not be. This indictment charges that Rerdell was a conspirator with Dorsey and Brady and others, naming them, and other parties unknown to the grand jury. Suppose, for a minute, your honor, that we had his statement in writing of the fact, not in such shape that it would bind the other parties, but a solemn statement of his own in writing that he did the act

charged in this indictment, and was party to a conspiracy. Then, under the rule indicated by the other side, it could not be read. Suppose again we prove, by Mr. MacVeagh, Rerdell's admission. I put on the stand another witness and I prove Dorsey's admission; I put on the stand another witness and I prove Miner's admission, and I prove the admission of all as against each one who made the admission. Could there be better and stronger evidence offered to a court of justice, and can it be possible in such a case there is any technical rule of law as to the proof of the *corpus delicti* outside of and prior to confessions that would exclude these confessions until such proof was made?

The COURT. If you offered to prove by each of these in succession that he acknowledged that a conspiracy existed between himself and the others, that would not be admissible, because we may differ as to what constitutes a conspiracy. The acknowledgment must be of some fact, and if you propose to prove by this evidence some fact——

Mr. MERRICK. Oh, I propose to prove the fact.

The COURT. [Continuing] tending to establish a conspiracy between himself and the others, I do not know but it would be evidence, because we can only examine one at a time, and I may not presume but that you may call the others to other facts; but the conspiracy has to be made out by proof of facts, not by admission in a general way that conspiracy existed, because that is a question of law.

Mr. MERRICK. That is a general expression. By "conspiracy existed" I mean that the proof which I expect here is not a simple statement that a conspiracy existed, but a statement as to facts in detail out of which the conclusion of conspiracy necessarily grows.

The COURT. Then the facts to be proved are facts going to establish a conspiracy?

Mr. MERRICK. Yes, sir.

The COURT. Now, if you were to limit yourself probably to facts of that kind, to be proved by the acknowledgment of this man, it is possible that his evidence might be received as competent, but these facts would have to be proved in the regular way.

Mr. MERRICK. The question was asked Mr. MacVeagh——

The COURT. [Interposing.] Pardon me. For example, a conspiracy has to be made out by circumstances, and if you prove that this man met with the others at a certain time that would be a proof of his acts. Now, if you can prove that he was present upon certain occasions with the others, probably that might be received.

Mr. MERRICK. My general question to the witness on the stand, your honor recollects, was this: State in detail and with particularity as to date and time and language or conversation all that transpired between you and Mr. Rerdell. Now, I expect to prove that in that conversation he admitted acts—not that he rushed into the office and said, "I am a conspirator with A, B, C, and D;" not that. But I expect to prove he said he was.

The COURT. In relation to the existence of a conspiracy.

Mr. MERRICK. Certainly, sir; and to follow it up afterwards. Now, I must begin somewhere.

The COURT. Well, I am inclined to think that if you confine your inquiry to any facts tending to establish a conspiracy, those facts may be given in evidence. [Mr. Ingersoll arose.] I see the counsel are disposed to contest the point. The conspiracy is the first thing to be settled.

Mr. MERRICK. Now, your honor, one word about that.

Mr. INGERSOLL. I want to be heard upon that point.

The COURT. Proceed, Mr. Merrick.

Mr. MERRICK. I was called upon in the first instance to state the object, and went on and stated it.

Mr. INGERSOLL. We objected to that testimony. We have the closing.

Mr. MERRICK. How many speeches are to be made in the closing?

The COURT. The court is throwing out some difficulties in its mind.

Mr. MERRICK. I want to read generally, for the general case, a reference to an authority I wanted to use upon another point. It is the case of the Queen *against* Blake and Tye, 6th Adolphus and Ellis, new series, 126. The conclusion of the court is as follows:

PATTERSON, Justice. I agree that it is not necessary that the charge of conspiracy should be made out *per saltum*; that is, cannot be requisite unless we are prepared to say that nothing can prove a conspiracy except hearing the parties talk together. If this be not necessary, it follows that the existence of a conspiracy may be shown by the detailed acts of the individual conspirators.

Now, counsel, I understand, do not deny that.

Mr. INGERSOLL. There is no objection to that at all.

Mr. MERRICK. Now, then, I want that established. That is very important. But, as I said, I did not intend to use this on this point, but as it has come in, I do not want a contrary view to find lodgment in your honor's mind.

Therefore the entry made by Tye in his day-book was admissible in order to show one act done in accordance with the common purpose.

The COURT. Yes. But that was in pursuance of the common purpose.

Mr. MERRICK. Yes, sir. Now then, they had not proved at that time the common purpose.

The COURT. Was it admitted for the purpose of establishing the conspiracy?

Mr. MERRICK. Yes, sir; to establish the conspiracy, for he says you cannot prove the conspiracy at one leap, *per saltum*, but you must prove it by acts done which you charge to be, and which may be found to be in execution of the conspiracy; and the entry made in the day-book of one party, which was his declaration in his own book, was regarded as an act done from which the conspiracy might be inferred.

The COURT. Is that book here?

Mr. MERRICK. No, sir; I haven't the book. I have sent for it. And this bears upon the proposition that I first stated to the court that you are not required to prove the conspiracy by proof going to the fact of conversation around the table, by proof that the parties were seen together and overheard to declare in that common meeting their purpose; but that you may prove the conspiracy by proving individual acts which look to the accomplishment of an ultimate result, and which acts, when brought in, are in the relation of co-ordinates to each other, or supplement each other, and by their combined operation produce a result which would not be produced by any one act alone, and from those acts you infer the common purpose, upon the principle that men are presumed to do what their acts achieve.

I do not know that I have anything further to say to your honor in considering this question. I have sent for the books to show that the confession of a party is under all circumstances sufficient to bind him. How far it is competent as to others we can only tell when we get the testimony all in, and I am sure that your honor will not decide that if

I can prove by Mr. MacVeagh Rerdell's confession, and should prove by somebody else Dorsey's confession, and Brady's confession, and Miner's confession, and Vaile's confession, that all these confessions, though applicable to the individuals who made them alone, are not sufficient to prove the conspiracy unless primarily I introduce other and weaker circumstantial evidence to make it probable to your honor that there was a conspiracy; for there is certain evidence of the course of a conspiracy which becomes admissible when your honor finds that there was possibly or probably a conspiracy between the parties.

Now, your honor, the declarations of one as against the other depend for their competency upon the relation of principal and agent. Brother Totten did not seem to reason about that exactly. And it is true probably, though I do not want to argue that question, and I say it now, that before you can use the declaration of one, not made in execution of the alleged purpose of the conspiracy, as good against the other, you must first establish the fact of agency, and as the fact of agency is the fact of conspiracy there may have been some confusion in the minds of gentlemen upon that question. You must prove the agency, and if, proving the agency, you prove the conspiracy before the declarations of one can be admitted as valid testimony against the other—because to be valid testimony against the other he must make them in the authority of his agency, and in the execution of the agency; but to be valid against him, he as his own master speaks for himself, and as against him those declarations are always admissible. I submit that proposition.

Mr. BLISS. Your honor, may I say a word on one or two of these cases?

The COURT. Yes; this is a very important point in the case.

Mr. INGERSOLL. This is the whole of this case, right here.

Mr. MERRICK. It may be the whole of it on that side, but it is not on ours. I guess it is the whole of it on that side, sir.

Mr. BLISS. This case in 14th Ohio was an indictment for murder against one John Clawson, indicted jointly for murder with other parties, one of whom was named William Clawson, and it was said and held, and held properly, that until you have established a conspiracy you cannot use the declarations of one alleged conspirator against another. But the court went on to say, quoting the cases:

The question still remained, whether the declarations of William Clawson—

The person not indicted, not concerned here, though jointly indicted; the question came up simply against John Clawson—

though inadmissible against the prisoner as evidence of the *corpus delicti*, are not, nevertheless, admissible as evidence of the existence of a conspiracy to commit the crime charged, and thus to lay the foundation for the admission in evidence against the prisoner, of declarations by conspirators.

That is all this case is, and in various forms it states that, and they then go on and say:

And all the leading elementary writers on the law of evidence are decided in the expression of their opinions that evidence of such declaration is inadmissible, except as against the party by whom they are made.

That undoubtedly is true, and therefore if we shall fail to establish a conspiracy, assuming that these declarations of Rerdell shall have been made in the course of or pursuance of the conspiracy—if we should establish by other evidence the question of a conspiracy, then undoubtedly Rerdell's statements as to anybody but himself would be of no effect. But if by other evidence we establish the existence

of a conspiracy between him and some person unknown, and fail to establish it between him and the other person named in this indictment, then, beyond question, Rerdell's confessions would be evidence as against that other party in making out the existence of a conspiracy to enable him to be convicted as making the two with whom a conviction might be had. It was the same way in the case in 40th New York. The evidence offered there was to have the declarations of one conspirator, or alleged conspirator, offered as against the others. It was not evidence in the case of a man's own statement of what he had himself done. The cases seem to me to be not at all parallel to this case.

But coming back to the real facts in this case, as we believe them to be, suppose that Mr. Rerdell stated to Mr. MacVeagh that he himself had done some act. Suppose Mr. Rerdell himself said that he had taken some money and paid it to Brady. Take such a case. Would not Rerdell's declaration of that fact be evidence as against himself beyond all question?

The COURT. It would undoubtedly if the *corpus delicti*, that is the conspiracy, had been proved.

Mr. BLISS. You must prove the conspiracy by certain aggregation of facts. That Rerdell paid certain money to Mr. Brady is one fact. You could prove that by anybody who stood by and saw it done. You could prove by the confession or admission of Mr. Rerdell that he did it. It is one fact going to establish the conspiracy. It does not establish it, and unless by other facts the conspiracy is established between Mr. Rerdell and one or more other persons, then I grant you that the evidence fails to have its effect, ceases to have any practical bearing that justifies the Government in asking a verdict of guilty; but at the same time it is, as one of the facts, admissible in evidence tending to show that condition of things. Can it be possible, your honor, that if Mr. Rerdell were not a conspirator, but a witness who stood by and saw the money paid, that testimony would be admissible, and yet Mr. Rerdell's undisputed admission that he paid the money himself not be admissible as against himself and as proof of one single fact tending to prove a conspiracy? We have got to prove various things. We have got to prove that there are mail contracts. We have to prove a quantity of facts, all of which must lead up to the general result; and if then they lead up to the general result we have all our evidence in, and your honor is of opinion that we have not evidence enough to establish the guilt of any of these parties, your honor, under such circumstances, would direct an acquittal, and would do it with the concurrence of the prosecution. On the other hand, if your honor should be of opinion that there are facts which should go to the jury tending to show that conspiracy and the guilt of those parties your honor would submit that to the jury to pass upon; but we must put our facts in one after another, and our facts we say may as well be proved by the confession of a conspirator as by the testimony of an outside witness.

Mr. INGERSOLL. Now, I hope the court will pardon me, because this is extremely important.

The COURT. You have the conclusion. Now, if there is anything more to be said on the side of the Government, I should like to hear it.

Mr. MERRICK. There is nothing further except as to any new authorities, of course.

Mr. INGERSOLL. Now, with me, it is a *prima facie* case that there is no law on the other side when the Government attorneys fail to produce any. They have had plenty of time, a great deal of opportunity, plenty

of assistance, and they having failed to find but one case, convinces me that the law is my way, especially as that one case is on my side. This is the case in *6th Adolphus and Ellis, of The Queen against Blake*, referred to by one of the counsel for the Government:

The court, in the same term (January 27, 1844), granted a rule *nisi* for a new trial.

Sir F. Thesiger, solicitor-general, and W. F. Pollock, now showed cause. First, as to the admissibility of the day-book.

Now, it will occur that one of the defendants put some entry in his day-book, and upon that we get what they claim to be the law.

It is true that the declarations and acts of one defendant are not evidence against another until a conspiracy has been proved.

That was the first sentence, and that is by the solicitor-general, who then and there represented the government, and he never expressed the slightest astonishment that the defendant's attorney insisted that that was the law, and I presume the reason he was not astonished is that he had probably read Greenleaf on Evidence, who says that was the law even in ancient Rome.

It is true that the declarations and acts of one defendant are not evidence against another until a conspiracy has been proved.

That is a good line.

But here evidence had been given of a conspiracy between Tye and Blake.

And that is the reason that the entry in the day-book was admissible. Just see how perfect this is:

On the motion for the rule several authorities were cited. In 1 East's Pl. Cr., 96, it is said that, in cases founded in conspiracy, "the conspiracy or agreement among several to act in concert together for a particular end must be established by proof before any evidence can be given of the acts of any person not in the presence of the prisoner."

That is good. Because as a rule conspirators act secretly. Whenever they act so secretly that you do not find it out nobody is convicted. That is all. There is no rule of law that a murder can be so secret that incompetent evidence is admissible. The ground is taken here that the court should take into consideration the difficulty of proving a conspiracy, and on account of that difficulty admit incompetent testimony. I do not understand the law that way. I want the court to draw the distinction all the time. This is not testimony. The question is not whether if Rerdell were upon the stand he could testify. The question is whether his statement made, not in the presence of any of the defendants, not subject to cross-examination, and not under oath, can establish the crime.

And this must, generally speaking, be done by evidence of the party's own acts.

What evidence? What is evidence? Not the admission of a coconspirator. That is not evidence. There must be some evidence otherwise to show that the act was committed.

As by express evidence of the fact of a previous conspiracy together, or of a concurrent knowledge and approbation of each other's acts. But it may also be done by evidence of acts of the prisoner, and of any other with whom he is attempted to be so connected, concurring together at the same time and to the same purpose or particular object.

Now can anybody contend here that Mr. Rerdell was carrying out one of the objects of the conspiracy and that the balance of the conspirators were then aiding and abetting him in making this confession? Of course nothing of that kind is claimed. I presume another reason that this attorney-general expressed no surprise was, that he had read

Russell on Crimes, and also by Philips on Evidence, where it is laid down, with respect to the act or words of one conspirator being evidence against the others——

Where several persons are proved to have combined together for the same illegal purpose——

Where that has been proved——

any act done by one of the party in pursuance of the original concerted plan——

Then unless they made the plan originally that this man should confess, it is not part of it——

in reference to the common object, it is, in the contemplation of law, the act of the whole party, and therefore the proof of such act would be evidence against any of the others who were engaged in the same conspiracy.

Now, we come to the real point here :

And, further, any declarations made by one of the party at the time of doing such illegal act, seem not only to be evidence against himself, as tending to determine the quality of the act, but to be evidence also against the rest of the party, who are as much responsible as if they had themselves done the act. But what one of the party may have been heard to say at some other time as to the share which some of the others had in the execution of the common design, or as to the object of the conspiracy, cannot, it is conceived, be admitted as evidence to affect them on their trial for the same offense.

And this is the book introduced to substantiate the Government side of this proposition.

But what one of the party may have been heard to say at some other time as to the share which some of the others had in the execution of the common design, or as to the object of the conspiracy, cannot, it is conceived, be admitted as evidence to affect them on their trial for the same offense. And, in general, proof of concert and connection must be given before evidence is admissible of the acts or declarations of any person not in the presence of the prisoner.

Nothing could be better; nothing could be stronger.

It is for the court to judge whether such connection has been sufficiently established; but when that has been done, the doctrine applies that each party is an agent for the others, and that an act done by one in furtherance of the unlawful design is in law the act of all, and that a declaration made by one of the parties, at the time of doing such an act, is evidence against the others.

Now, that is so much. Now, we go to 40th New York again, where the principle is laid down with absolute and perfect clearness that the crime itself—that is to say, the conspiracy—cannot be established by confessions; that the conspiracy must first be established. I cannot imagine anything better than that.

To make such admissions or declarations competent evidence it must stand as a fact in the cause, admitted or proved, that the assignor and assignees were in a conspiracy to defraud the creditors. If that fact exists, then the acts and declarations of either, made in execution of the common purpose, and in aid of its fulfillment, are competent against either of them. The principle of its admissibility *assumes that fact*.

What fact? The existence of the conspiracy. Right here in Wharton's Criminal Evidence there seems to be the same thing. I refer to the eighth addition, paragraph 634:

It should be remembered that the *corpus delicti* consists not merely of an objective crime, but of the defendant's agency in the crime; and unless the *corpus delicti* in both these respects is proved a confession is not by itself enough to sustain a conviction. This is strikingly illustrated in a trial in Mississippi, where the evidence was that the circumstances of the deceased's death and the state of his body indicated poison by stramonium, or Jamestown weed; but that the same symptoms might have been caused by congestions of the brain, stomach, or heart; and it was properly ruled by the court that a confession of the defendant that he had administered to the deceased Jamestown weed, was not enough to warrant a conviction, the *corpus delicti* not being fully proved.

Impossible to find a stronger case. So I could go on.

The COURT. But that was a murder case in Mississippi.

Mr. INGERSOLL. There they were only going to hang the man. All he had done was to kill another. That was all. Now the propositions that I laid down—and I do not believe that a decision can be found on earth on the other side—are, first, that before any confession will convict a man—that confession having been made in open court, a man cannot be convicted upon that—the crime must have been otherwise established. Second, in a conspiracy case, the nature of conspiracy being such that it cannot be committed by one person, the confession of one person is not sufficient to convict him, because he does not establish the existence of the conspiracy. That evidence is not sufficient to convict anybody else, and not less than one person can be found to have been guilty. The other person, I believe, may be dead, and still they may find the living person guilty. But the verdict must show that two or more persons did combine, and the confession of one cannot prove the combination. Why? In the first place a confession, as I said before, is not made under oath; in the second place, it is not made in the presence of the defendants; in the third place, it is not subject to cross-examination; and in the fourth place, it is subject to great abuses.

Now then, all I insist upon in this case is, first, they must show the existence of the conspiracy, they must show that these defendants or some of them did combine together for this unlawful purpose. Then this confession can go in for what it is worth. But until they have established the conspiracy, the confession has no business here. Now, if they have any books they would like to read, I would like to have them read them now so that I can answer them.

The COURT. They do not propose to read any new books I believe. They only claim the privilege of replying to any new authorities cited in your closing argument.

Mr. INGERSOLL. I have only cited one authority new. I have cited Wharton's Criminal Evidence. That was referred to before. I did not read the case, but I told the facts.

Now, then, this man makes a confession. It is in the discretion of the court to say when that shall be admitted. Now, will the court cast a cloud, a shadow, a stain upon this case, or dust in the eyes of this jury, by admitting what they claim, the confession of somebody, until they have established this conspiracy? They have got other evidence, or else this is all they have of the case. If it is all there is of this case, then it is no case. Secondly, it is not a hardship to say to the Government "You must first establish the conspiracy." That is all I ask to have done. And I do not want this confounded with acts. This is not an act of Rerdell's. This is a confession. What I mean by acts is some act done in pursuance of the conspiracy. Now, suppose Rerdell would have said in this connection, "I took and handed \$5,000 to James Smith with instructions for James Smith to give it to Thomas J. Brady." I admit if James Smith should come in and swear to that fact that Rerdell could go upon the stand and swear to that fact. But I deny that his confession of that fact could be given in evidence until the conspiracy had been otherwise established.

The COURT. If one object of the conspiracy was to obtain money, and he had obtained it and divided it, would not the confession that he had divided the money be admissible evidence?

Mr. INGERSOLL. No, sir. If Rerdell's confession was that he had gone and drawn \$50,000 and divided it among the conspirators, that

would not be evidence until they had established the existence of the conspiracy.

The COURT. I understand that.

Mr. INGERSOLL. But if they could prove it otherwise by anybody else, or by himself on the stand, then it is good.

The COURT. I understood, though, that you deny that after the conspiracy had been established the partition of the money could be proved.

Mr. INGERSOLL. I do not deny that.

The COURT. I misunderstood you.

Mr. INGERSOLL. After the conspiracy has been established, then the confession of Mr. Rerdell is good as against himself.

The COURT. Then there is no difference of opinion between us.

Mr. INGERSOLL. I admit that cheerfully, but the question is when it should be established. After they show the existence of a conspiracy the confession of Mr. Rerdell would be good as against himself.

The COURT. [To counsel for the Government.] Have you anything to say to this new authority—Wharton on Criminal Evidence?

Mr. BLISS. I have nothing to say, sir. The authority is not here. It is not, apparently, in the building. We have sent to the library for it, but the book we want is not here. I have nothing to say, excepting that I do not see how the court can usurp the authority of the jury before the preliminary of putting in Mr. Rerdell's confession.

The COURT. Conspiracy is a crime, and to commit a conspiracy more than one person is necessary. In this instance there are, I think, eight defendants, between whom and other persons, unknown, conspiracy is said to have existed. The rule of law is that no man's confessions or stories not sustained by his oath—of course, when he is subject to examination—can fasten guilt upon anybody else than himself. Another rule of law in regard to conspiracy is, if the conspiracy has once been established, then the conspirators are all agents of each other so far as the purpose and object of the conspiracy are concerned, and, being agents of each other in that common business, whatever one says in pursuance of the common object is taken as the confession of them all, and is binding upon them all. But in order to make the confession or statement of the one person binding upon the other there must be an agency, and the agency, in a case of conspiracy, can only be established by proof of the conspiracy. It is certainly not to be allowed that the conspiracy can be established by the acknowledgment of one of the alleged conspirators, because that would be admitting the acknowledgment of one party to prove his authority as an agent of another before the agency had been proved. In this matter the conspiracy is the *corpus delicti*; that is, it is the crime; it is the offense. In the crime of murder, or homicide of any kind, what is called the *corpus delicti* is the death. Well, if a man were to come into court and say that he had committed a homicide, his confession would not even bind himself. It must be proved that the man was dead, or circumstances must be shown to lead to the belief that he was dead. I think in this case, that at present, at any rate, the evidence is not admissible. It is said that the jury is to judge of whether the conspiracy has been established; but that is not so. The court is to determine whether evidence has been given tending to establish the existence of the conspiracy, although that be a fact, and the facts are generally to be determined by a jury; yet, in a case of this character, where there are different steps in the progress of the trial, the duty of deciding upon the fact whether it is established *prima facie* or not, de-

volves upon the court. It is like a case of proof of handwriting in a civil suit. All that is necessary is, that the court shall see that there is some evidence which may fairly be left to the jury on the question of a conspiracy. If there be such evidence as to satisfy the court that the existence of a conspiracy is a fair subject for the jury to determine, then the court will open the door and admit the confessions of one of the defendants as against the others and as against himself, so far as those confessions necessarily or properly relate to the business of the conspiracy. After the conspiracy is over, of course the confessions of one are not binding upon another. Even during the continuance of the conspiracy, the confessions of one are not binding upon the others, unless they are made in relation to the objects and purposes of the conspiracy. At present, at least, I am not prepared to admit this evidence. Before concluding, I will read a paragraph from 2nd Archibald's Criminal Practice and Pleading, beginning at marginal page 619 :

A conspiracy is proved either expressly, or by the proof of facts from which the jury may infer it.

From which the jury may infer it.

It is seldom proved expressly : nor can a case easily be imagined in which that is likely to occur, unless where one of the persons implicated in the conspiracy consents to be examined as a witness for the prosecution. In nearly all cases, therefore, the conspiracy is proved by circumstantial evidence, mainly by proof of facts from which the jury may fairly imply it. It is usual to begin by showing that the defendants all knew each other, and that a certain degree of intimacy existed between them—

I believe all that was admitted in the opening, was it not ?

Mr. MERRICK. All of it.

The COURT.

—so as to show that their conspiring together is not improbable; and if to this can be added evidence of any consultation or private meetings between them, there is, then, a strong foundation for the evidence to be subsequently given, namely, of the overt acts of each of the defendants, in furtherance of the common design.

Now, in regard to the other point, I find in Roscoe's Criminal Evidence, at page 50, something said in regard to admissions as affecting others :

It is quite settled, generally, that a confession is only evidence against the party making it, and cannot be used against others. With respect to conspiracy, there is some obscurity on the subject, which will be found discussed in the chapter relating to that offense, *post*. But a difficulty occurs where a confession by one prisoner is given in evidence, which implicates the other prisoners by name, as to the propriety of suffering those names to be mentioned to the jury. Several cases are collected in 1 Lewin, C. C., 107, which show that Littledale, J., Alderson, B., and Denman, C. J., considered that the whole of the confession, whether verbal or written, ought to be presented to the jury, not omitting the names; Park, B., thought otherwise. See *R. vs. Fletcher*, 4 C. & P., 250; 19 E. C. L. R., and *R. vs. Clewes*, *Id*, 221; 19 E. C. L. R., where Littledale, J., says that he has formed his opinion after much consideration.

The confession of the principle is not admissible in evidence to prove his guilt upon an indictment against the accessory. One Turner was indicted for receiving sixty sovereigns, &c., by one Sarah Rich, then lately before feloniously stolen. To establish the larceny by Rich, the counsel for the prosecution proposed to prove a confession by her, made before a magistrate in the presence of the prisoner, in which she stated various facts, implicating herself and others, as well as the prisoner. Patterson, J., refused to receive as evidence anything which was said by Sarah Rich respecting the prisoner but admitted what she had said respecting herself.

That was an indictment charging her with a separate crime.

The prisoner was convicted. Having afterwards learned that a case had occurred before Mr. Baron Wood, at York, where two persons were indicted together, one for stealing, and the other for receiving, in which the principal pleaded guilty, and the receiver not guilty, and that Mr. Baron Wood refused to allow the plea of guilty, to establish the fact of the stealing by the principal as against the receiver, Patterson, J., thought it proper to refer to the judges the question "Whether he was right in ad-

mitting the confession of Sarah Rich in the present case ?" All the judges having met (except Lord Lindhurst, C. B., and Tannton, J.), they were unanimously of opinion that Sarah Rich's confession was no evidence against the prisoner, and the conviction was held wrong.

So that the party must be bound by his own confessions only; and as in this case not yet has there been any evidence received to establish the existence of a conspiracy on the part of the defendants, the proof of the acknowledgment made by this defendant, Rerdell, must be evidence simply of his own guilt, and as he cannot be convicted in this case of any offense except conspiracy, and conspiracy requires two, it is not competent evidence against him, because he is not indicted separately. He is indicted for conspiracy.

Mr. MERRICK. [After a pause.] This decision necessarily postpones the testimony which I proposed to offer this morning, until some further testimony is offered. In reference to the relation of the parties, your honor stated or suggested that there was no necessity for proof by us, as all that was stated to the jury in the opening by the two counsel, Mr. Hine and Mr. McSweeney.

The COURT. I merely referred to that incidentally.

Mr. MERRICK. I supposed it would not be necessary.

The COURT. That is for you to consider.

Mr. MERRICK. Your honor made a reference to it.

The COURT. I did refer to it, and my attention was attracted to it in the opening.

Mr. TOTTEN. Is it intended to prove Mr. McSweeney's confessions now ?

The COURT. They have not offered them yet.

Mr. TOTTEN. That is what brother Merrick was offering, I think.

Mr. MERRICK. I do not think I did. I am not aware that I did. I presume counsel, when they make a statement in open court——

The COURT. [Interposing.] The fact of the association and friendly relations existing between a number of these parties was stated not only by Mr. McSweeney but by Mr. Hine.

Mr. INGERSOLL. Mr. Dorsey and Mr. Peck and Mr. Miner were friends.

The COURT. Yes; Mr. Peck was a brother-in-law of Dorsey.

Mr. MCSWEENEY. It is not denied, sir.

Mr. MERRICK. I suppose, of course, what counsel states in open court is not denied.

Mr. MCSWEENEY. Oh, we do not deny that. I do not speak as to Mr. Vaile. We don't go back on anything we say.

The COURT. Mr. Vaile was engaged in farming.

Mr. MCSWEENEY. He was in the orchard.

Mr. HINE. Your honor ruled that out; so that cannot be given against him.

By Mr. BLISS:

Q. [Submitting a paper to the witness.] Please look at that paper which I show you. Do you remember to have seen it before ? I simply ask you for the purpose of identifying it.—A. I do not recall it.

Mr. TOTTEN. What is it ?

Mr. MERRICK. We do not offer it. We want to identify it first.

Mr. TOTTEN. It is not identified.

Mr. BLISS. He says he does not recall it.

Mr. TOTTEN. Let us look at it.

Mr. MERRICK. Not until we offer it.

Mr. TOTTEN. Let us see it.

Mr. MERRICK. We will not offer it to-day.

Mr. WILSON. Is it a part of the records of the Post-Office Department?

Mr. MERRICK. We will not say anything about it until we offer it.

Mr. TOTTEN. You are ashamed of it, are you?

Mr. MERRICK. I think you will be when you see it.

Mr. WILSON. If it is a part of the records we ought to have it.

[The witness left the stand.]

Mr. MERRICK. This testimony was a little out of order, to accommodate a couple of gentlemen who were here; Mr. MacVeagh and another gentleman. It was for their accommodation that I wanted to get it in now. We will go on and offer some other formal proof.

JOHN H. FALCONER, recalled.

Mr. BLISS. The witness is yours, Mr. Wilson.

Mr. WILSON. I understood the court to say that all those matters that were in the record might be considered as testimony.

Mr. TOTTEN. You asked him to bring those two reports, and he has them in his hand.

The WITNESS. You directed me to bring the reports of 1879 and 1880.

Mr. WILSON. And you did so?

The WITNESS. Yes, sir.

By Mr. WILSON:

Question. As you are on the stand you may state what was the railroad, steamboat, and star route service in 1879, the length of miles and the mileage carried. Please repeat the information you gave yesterday as to the years 1879 and 1880. That is all I want.—**Answer.** The service as it stood on the 30th of June, 1879, was as follows: Star routes in number, nine thousand two hundred and twenty-five. Steamboat routes in number, one hundred and twelve. Railroad routes in number, one thousand and fifty-nine. The aggregate length in miles of the star routes was two hundred and fifteen thousand four hundred and eighty. The aggregate length in miles—not transportation, but the length—of the routes on steamboats, twenty-one thousand two hundred and forty. Railroad routes in length, seventy-nine thousand nine hundred and ninety-one miles. The aggregate amount traveled by those respective routes, or the amount of service performed on those three classes of service for the fiscal year ending June 30, 1879, is: Star routes, sixty-nine million two hundred and forty-eight thousand three hundred and thirty-nine; steamboats, five million ninety-one thousand four hundred and seventy-four; railroads, ninety-three million ninety-two thousand nine hundred and ninety-two.

By Mr. INGERSOLL:

Q. What is the whole aggregate?—**A.** The whole aggregate of transportation for the three classes of service for that year is one hundred and sixty-seven million four hundred and thirty-two thousand eight hundred and five miles. Now for the year ending June 30, 1880, the number of star routes was nine thousand eight hundred and sixty-three; steamboat routes, one hundred and thirty-one; railroad routes, eleven thousand one hundred and eighteen. The aggregate length in miles of star routes is two hundred and thirty-five thousand two hundred and forty-eight; of steamboat routes, twenty-three thousand three hundred and twenty; of railroad routes, eighty-five thousand three hundred and twenty miles. Now the amount of service per-

formed on those three classes of service for that year was as follows: Star route service, seventy-six million seventy thousand nine hundred and ninety-five; steamboat service, five million six hundred and sixty-eight thousand five hundred and thirty-eight miles; railroads, ninety-six million four hundred and ninety-seven thousand four hundred and sixty-three miles. The aggregate of the three classes of service, star, steamboat, and railroad is one hundred and seventy-eight million two hundred and thirty-six thousand nine hundred and ninety-six.

Mr. WILSON. That is all.

Mr. TOTTEN. Will you leave those books with us?

The WITNESS. I can leave them. They belong to the library and are used for references frequently.

Mr. WILSON. Have you any more of them?

The WITNESS. There are other copies that can be procured.

Mr. WILSON. I guess you had better leave them.

Mr. MERRICK. Give them to the stenographer and let him mark them.

[The books in question, being the reports of the Postmaster-General for the fiscal years ending June 30, 1879, and June 30, 1880, were marked by the stenographer, for identification, "Proved June 9, 1882. E. D. E."]

Several witnesses were called, but none responded.

Mr. CARPENTER. If the court please, I suggest that as the Government witnesses do not appear, probably having expected Mr. MacVeagh to go on, and as it is nearly recess time, that we had better take it now while the witnesses come in.

The COURT. I think that suggestion may as well be adopted.

At this point (12 o'clock and 15 minutes p. m.) the court took a recess for half an hour.

AFTER RECESS.

GEORGE J. BREWER was sworn and examined.

By Mr. KER:

Question. Are you employed in the Post-Office Department?—Answer. I am, sir.

Q. Were you employed there in 1878 and 1879?—A. Yes, sir.

Q. And up to the present time?—A. Yes, sir.

Q. What position do you hold there?—A. Clerk in the contract office.

Q. In 1878 what position did you hold?—A. The same, sir.

Q. Did you have charge of any of the routes that are called the star routes?—A. I did, sir.

Q. Which routes did you have charge of?—A. Kansas, Nebraska, Dakota, and Indian Territory.

Q. The routes embraced in this book [exhibiting to the witness the advertisement of the Post-Office Department of November 1, 1877, for proposals for carrying the mails in the Territory named]?—A. Yes, sir.

Mr. KER. This book is already in evidence.

Q. You had charge of route No. 34149, from Kearney to Kent?—A. Yes, sir.

Q. You also had charge of route No. 35015, from Vermillion to Sioux Falls, Dakota?—A. Yes, sir.

Q. And route No. 35051, from Bismarck to Tongue River, Dakota?

—A. Yes, sir.

Q. Do you know Mr. William H. Turner?—A. I do, sir.

Q. Was he employed there at the same time you were?—A. He was.

Q. Was he in the same office with you?—A. Yes.

The COURT. [Referring to repeated requests to the witness to speak louder.] There must be something the matter with that Post-Office building; none of the witnesses from there speak loud enough to be heard.

Mr. TOTTEN. They have become suspicious, your honor, under the proceedings of the last year.

The COURT. They whisper.

Mr. MCSWEENEY. They speak low.

Mr. TOTTEN. Yes; on account of room 22 Post-Office Department.

Q. Did you assist in preparing these advertisements?—A. I prepared this one, sir [pointing to book].

Mr. WILSON. Which one is that?

The WITNESS. Kansas and Nebraska, Indian and Dakota Territories.

Q. That is the advertisement of November 1, 1877, the contracts to begin July 1, 1878?—A. Yes, sir.

Q. [Submitting a number of papers to the witness.] Look at these papers and say whether you have seen them before.

Mr. WILSON. What are they?

Mr. KER. They are the contracts.

Mr. WILSON. Tell us what they are, and we will try and abbreviate this case. We don't want to stay here during the hot weather.

Mr. MERRICK. They are the contracts.

Mr. KER. I am glad to find there is some ground on which we can meet. I will hand these contracts to you and see whether you will admit them to be the contracts spoken of.

Mr. WILSON. We want to shorten this case all we can, and do not want to throw any obstacle in the way of getting at the truth.

Mr. MERRICK. That is very evident!

[The contracts were submitted to the counsel for the defense.]

Mr. INGERSOLL. We have no objection to admitting that they are the records of the department.

Mr. WILSON. Not the slightest, so far as we are concerned. I understand that there are but three of these that this witness could identify—for the others do not belong to his section or division—but we are entirely willing to admit, as I understand, that these are of the files of the department, and save you any trouble of proving the formal execution of them.

Mr. KER. For that concession we are extremely obliged to you.

Mr. TOTTEN. They are the records.

Mr. MERRICK. I understand them to say they will save us the trouble of proving the formal execution.

Mr. HIXE. So far as my clients are concerned, I admit that these papers are found on the files of the Post-Office Department, and that they are produced here from those files. That is all this witness can prove, anyway. The question of their admissibility in evidence of course will come up at a future time.

The COURT. Yes.

Mr. MERRICK. Is their execution admitted?

Mr. INGERSOLL. No, sir; not on my part. I admit that they are of the files of the department.

Mr. MERRICK. Go on with your proof, Mr. Ker; nothing is admitted.

Q. In the course of your business in connection with the three contracts that are mentioned here that you had charge of, when letters or petitions or applications belonging to one of these three routes came to you, what did you do with them? I want you to explain the mode of doing business as you do it.—A. When it came to my desk I put on the date it was received at my desk, the name of the State, the number of the route, and a very brief statement of the contents of the paper.

Q. What did you put that statement on?—A. On the paper itself.

Q. Did you use a jacket?—A. When we get up a case for action we use a jacket of this kind [producing a jacket].

Q. That is what you call a jacket?—A. Yes, sir.

Q. You inclose the papers in this jacket?—A. Inclose the papers in that jacket, giving the State, number of route, termini of the route, distance, number of trips, contractors named, amount of pay, and then make a brief statement of what was requested to be done on the route. If it was to be for expedition it would be so stated, or increase of trips, or decrease of trips, or curtailments, or anything of that kind; and then presented to the Second Assistant Postmaster-General for his action.

Q. Did you present it to him yourself?—A. It was generally done by his direction.

Q. After you had briefed the papers, what became of them?—A. I gave them to the chief clerk.

Q. To take to the Second Assistant Postmaster-General?—A. Yes, sir.

Mr. TOTTEN. Wait a minute. Don't put words into his mouth. Ask him what was done with them. We are proving the course of business I take it.

Mr. KER. I only want the truth.

Mr. TOTTEN. I see you do.

Q. Were they returned to you?—A. No, sir.

Q. After the Second Assistant had taken them?—A. They were returned to me if the action was favorable. Then I filled up the circulars and wrote the letters that were necessary.

Q. You are getting ahead of me. Suppose it were for a reduction of time—who made the calculations?—A. I did.

Q. Who made the order?—A. I made the order.

Q. You wrote the formal order?—A. I wrote the formal order.

Q. Who signed the order?—A. The acting Second Assistant Postmaster-General.

Q. What became of the paper then?—A. It went from there to the journal room for record, and there an official number and an official date was given.

Q. Well, did it reach you again?—A. No. Then it went from there, since 1879, I think, to the railway service division, where an abstract was made of it for the postal bulletin, which is published daily.

Q. Do you know what time in 1879?—A. I do not. Some time in 1879 they commenced publishing a postal bulletin at the office. It was done by the railway-mail service division, and these orders that affected the distance, pay, and that sort of thing, changing the routes, went to that office to be published in that bulletin. From there the order went to the statistician. After he got through with it it came back to me, and then the route-book clerk for the section recorded it on the book, made the changes in the pay, distances, or anything of that kind that might be in order, and then it went to the permanent files of the department.

Q. It finally reached you and you placed it on the files ?—A. Yes, sir.

Q. Are the papers belonging to each route kept separately or all put together ?—A. There are three routes usually in a pigeon-hole ; where there are too many it cannot be done.

By Mr. BLISS :

Q. When papers came into your——

Mr. TOTTEN. [Interposing.] How many counsel are to examine one witness ?

Mr. MERRICK. There ought to be one on each side, I suppose.

Mr. TOTTEN. Which side is Mr. Ker on, and which side is Mr. Bliss on ?

Mr. MERRICK. You are on one side and Ker is on the other.

Mr. BLISS. If your honor will permit me I will merely say that the reason I did not adhere strictly to the rule of the court was this : In the preparation of the case Mr. Ker was assigned certain formal matters. The matter of putting in the evidence on the routes, &c., comes to me. Mr. Brewer would have to testify upon the first route that is taken up and some matters in connection with that.

The COURT. The general practice in this court has been that the counsel who commences the examination of the witness continues until the close of his testimony. If there is more than one counsel they may change with witnesses ; but whoever starts with the examination of a witness, as a general rule, completes that witness. Mr. Ker is a little hard of hearing, and the court will not enforce the rule in his case.

Mr. BLISS. I can let the witness go from the stand and when I get to my portion of the case, I can recall him and go on with my portion of the case.

The COURT. You may proceed.

Mr. WILSON. Go on.

Mr. MERRICK. I think, according to Mr. Totten's suggestion, we had better have an understanding with reference to this matter. I appreciate the delicate consideration your honor has shown, but I am of the opinion that but one counsel on either side should examine and cross-examine.

The COURT. The same witness ?

Mr. MERRICK. The same witness.

The COURT. There is no objection to that. I think that is a very good rule.

Mr. INGERSOLL. I do not object to all asking questions that want to. The only point is that now and then a witness may come up and be cross-examined, for instance, by the attorneys of Mr. Brady, and there may be a fact brought out on which counsel for one of the other defendants may want to question him. I do not see any particular objection to their asking a question or two in such a case.

The COURT. There are nine or ten of you and if you open that door all can do it. The better way would be for those who wish to put an additional question to do it through the counsel who is conducting the examination.

Mr. MERRICK. It will save trouble and confusion.

Q. You have stated that the papers came to you and you put them in the files after going through this process. Had you the exclusive charge of the bundles of papers pertaining to those three routes ?—A. I had up to about a year ago. They were in my room.

Q. Could papers get into that bundle without your being aware of

it?—A. The office is open; the doors are open so that they could do it if they saw fit to.

Q. I know the doors are open and all that, but could papers get into that bundle in the files without first passing through your hands while you had charge of them?—A. They could, for this reason, that after I leave the office at 4 o'clock the room is sometimes not closed for two hours.

Q. That is all right. They could all be burned up for all you know; but what I mean is this: There is a bundle of papers pertaining to a route. You have charge of them. Did they go to Mr. Brady before they came to you, or did they go from you to Mr. Brady?—A. Very frequently they went to him before they came to me. Very frequently after cases were made up papers were added at General Brady's desk.

Q. How long did General Brady keep the papers before they came to you?—A. That is a question that no one can answer. He might keep some of them a day and others for months.

Q. Did you act upon the papers each day, or did you allow them to accumulate before acting?—A. Acted at once.

Q. How was it with Mr. Brady?—A. Mr. Brady did not act every day when the papers were presented to him.

Q. How long, in any instance, if you can remember, was the length of time he retained the papers without action?—A. Some of them were not acted on at all when Mr. Brady left the office. I suppose there were from two hundred and fifty to three hundred cases on his desk unacted on.

Q. You have stated that those papers that went through and were placed on file were not acted on by him right away. But when they were acted on what length of time was it, usually?—A. Sometimes they were acted on right away, and other times it may have been days or months before they were acted on.

Q. You say that you indorsed these papers. Now, I want to ask you this: If a paper went first to Mr. Brady and then subsequently came to you, what would be the date that you would place upon the paper?—A. The date that it would come to my desk; I know no other date.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. You have been talking about the general course of business in that office?—A. Yes, sir.

Q. You were inquired of as to whether you knew Mr. Turner?—A. Yes, sir.

Q. Did Mr. Turner have anything to do with route No. 34149?—A. No, sir; it was in my section.

Q. Did he have anything to do with No. 35015?—A. No, sir.

Q. Did he have anything to do with 35051?—A. He made one order on that route during my absence, for increase.

Q. Did you ever know of any increase being made between the time that the contract was made and the time that the service goes into operation?—A. Yes, sir; I have done it within a month.

Q. It is a very common thing, is it not?—A. Yes, sir.

Q. How long have you been in the department?—A. Since 1866.

Q. Has there been any change in the custom of the department in that respect?—A. Not that I am aware of.

Q. During the time that you have been there?—A. No, sir.

Q. Have you ever known the service to be curtailed between the time of the letting of the contract, and the time the service went into operation?—A. Yes, sir.

Mr. BLISS. Do you mean trips, or time, or what?

Mr. WILSON. Either.

Q. Have you known it to be reduced in distance?—A. It has been reduced in distance. I have made three orders of that kind recently.

Q. Have you ever known it to be reduced in trips before the service went into operation?—A. I think so; I would not be sure about that; I think that is the case.

Q. When you reduce it before the service goes into operation, do you allow the contractor a month's extra pay?—A. Certainly, if he has executed his contract.

Q. If he has entered into his contract?—A. Yes, sir.

Q. You mean signed it?—A. If it has been reported to the auditor for payment he is entitled to a month's extra pay when it is curtailed.

Q. Whether he has performed any service at all, or not?—A. Yes, sir; it is the custom of the department.

Q. How long has that been the custom?—A. It has always been the custom since I have been there.

Q. If, therefore, the contractor has signed the contract, and it has been filed in the contract, although he has never performed any service at all, if the service is reduced, the length of the route cut off, shortened, he gets his month's extra pay?—A. He gets his month's extra pay on the sum saved.

Mr. BLISS. I suppose I do not violate the rule in asking the witness now something that I omitted?

The COURT. No.

Mr. WILSON. Go on.

Mr. MERRICK. There is no violation.

Mr. BLISS. No matter. I will ask Mr. Ker to put the question.

By Mr. KER:

Q. Did you ever know of a case of ordering or making the expedition before the contract went into effect?—A. I don't recollect of anything of that kind.

Q. None has come under your knowledge?—A. I don't recollect of any.

By Mr. WILSON:

Q. Do you know of cases where the service was increased after the execution of a contract, I mean the signing of it, and before the service was begun?—A. Yes, sir.

Q. Then you add correspondingly to the pay of the contractor?—A. We add pro rata.

By Mr. BLISS:

Q. But you never knew of expedition?—A. I don't recollect of any.

By Mr. WILSON:

Q. How long has that practice prevailed?—A. It has prevailed, I think, all the time since I have been in the department.

Q. If the service is increased at any time before it begins, then what do you do?—A. We give pro rata pay, unless—

Mr. MERRICK. Unless what?

The WITNESS. Unless pro rata pay is considered too high; then we write to the contractor to know what he will perform it for, and to get a lower offer.

Q. And then if he does not make a lower offer, what do you do?—A. If it is considered necessary we allow pro rata.

Q. Now, if the service is decreased during the contract term, what do you do?—A. We allow a month's extra pay on the sum saved.

Q. Suppose you set aside the whole route, what do you do?—A. Allow a month's extra pay on the whole of the contract, whatever the pay may be at that time.

Q. That has been the rule ever since you have been in the department, has it?—A. Yes, sir; unless it is done at the request of the contractor. If it is done at his request, it cuts him off.

Q. Then if he abandons the service, or if it is abandoned at his request, he forfeits the month's extra pay?—A. Yes, sir.

Q. And these have been the practices of the department ever since you have known it in 1865?—A. Eighteen hundred and sixty-six.

[The witness then left the stand.]

Mr. BLISS. I will now call attention to the act of March 3, 1877, section 3, being section 49, as it is numbered in the Postal Laws and Regulations for 1879.

Mr. WILSON. What is the page?

Mr. BLISS. Page 46.

Contracts signed by the Second Assistant.—The Second Assistant Postmaster-General, on the order of the Postmaster-General, may sign with his name, in the place and stead of the Postmaster-General, and attest his signature by the seal of the Post-Office Department, all contracts made in the said department for mail transportation, and for supplies of mail bags, mail catchers, mail locks, and keys, and all other articles necessary and incidental to mail transportation.

I also call your honor's attention to the provision in the regulations of 1873, which I am now going to read to the jury—the regulations being in evidence—calling attention to the fact for the purpose of showing what powers are given to the Second Assistant Postmaster-General under the provisions of the statute giving the Postmaster-General power to confer them upon the subordinate.

Mr. WILSON. What is it you want to do?

Mr. BLISS. I read from the one hundred and forty-eighth page of the regulations of 1873.

Mr. MERRICK. The point is to show that the Second Assistant Postmaster-General makes these contracts himself by the general authority vested in him under the regulations and laws; and that the journal the of Post-Office Department is simply a record of these transactions; and contracts derive no power from that journal.

Mr. WILSON. You can consider it admitted that General Brady signed "D. M. Key" on each one of these contracts.

Mr. BLISS. It is a little more than that, and I prefer to read it.

Section 3.—*The Contract Office*, including the divisions of contracts, inspection, mail equipments, special agents, and mail depredations, and the topographical division, in charge of the Second Assistant Postmaster-General.

Contract Division.—To this division is assigned the business of arranging the mail service of the United States, and placing the same under contract, embracing all correspondence and proceedings respecting the frequency of trips, mode of conveyance, and times of departures and arrivals on all the routes; the course of the mails between the different sections of the country, the points of mail distribution, and the regulation of the Government of the domestic mail service of the United States. It prepares the advertisements for mail proposals, receives the bids, and has charge of the annual and occasional mail lettings and the adjustment and execution of the contracts. All applications for the establishment or alteration of mail arrangements, and for mail messengers, should be sent to this office. All claims should be submitted to it for transportation service not under contract. From this office all postmasters at the ends of routes receive the statement of mail arrangements prescribed for their respective routes. It reports weekly

to the auditor all contracts executed, and all orders affecting the accounts for mail transportation; prepares the statistical exhibits of the mail service, and the reports to Congress of the mail lettings, giving a statement of each bid; also, of the contracts made, the new service originated, the curtailments ordered, and the additional allowances granted within the year.

Inspection Division.—To this division is assigned the duty of receiving and examining the registers of the arrivals and departures of the mails, certificates of the service of route agents, and reports of mail failures; noting the delinquencies of contractors, and preparing cases thereon for the action of the Postmaster-General; furnishing blanks for mail registers, reports of mail failures, and other duties which may be necessary to secure a faithful and exact performance of all mail contracts and service.

Mail Equipment Division.—To this division is assigned the issuing of mail locks and keys, mail pouches and sacks, and the construction of mail-bag catchers.

Division of Special Agents and Mail Depredations.—All cases of mail depredations, or violation of law by private expresses, or by the forging or illegal use of postage-stamps, are under the supervision of this division, and should be reported to it. Special agents of the departments make their reports to this division, and all accounts of special agents for salary, per diem, and expenses are also transmitted to the chief of this division for examination and presentation for allowance to the Postmaster-General.

Topographical Division.—This division is charged with the preparation of the post-route maps and diagrams, and with the keeping up of the geographical information requisite for the various branches of postal service.

I am obliged, your honor, to read the regulations of both years, because those of 1873 apply in 1878, and down to July, 1879; and in July, 1879, there came in the others. This indictment relates to both.

Mr. TOTTEX. Do you claim that the head "contract division" is equally comprehensive with section 49, being the statute of 1877, which authorizes the Second Assistant to sign upon the order of the Postmaster-General?

Mr. BLISS. I have not raised any questions to the particular breadth of either one of those sections.

Mr. MERRICK. You asked what they were read for, and I told you.

Mr. BLISS. I should have read in the regulations of 1873 the following, on page 147, chapter heading "organization of the department":

Section 1. The direction and management of the Post-Office Department are assigned by the Constitution and laws to the Postmaster-General. That its business may be the more conveniently arranged and prepared for his final action, it is distributed among several bureaus, as follows:

I now read from the regulations of 1879:

Section 27.—*Distribution of the Business of the Department.*—That the business of the department may be conveniently arranged and prepared for the final action of the Postmaster-General, it is distributed among its several officers as follows:

The Office of the Postmaster-General.—The duties of this office are under the immediate supervision of the chief clerk of the department, and relate to the miscellaneous correspondence of the department not specially connected with its other offices; the appointment of department employes; the recording of orders promulgated by the Postmaster-General; the fixing of rates for the transmission of Government telegrams; the supervision of the advertising, and management of the general work of the department not otherwise assigned. To it is attached the office of the topographer, charged with the duty of keeping up the maps in constant use in the department proper; with the preparation and publication of new and revised post-route maps; with supplying maps to all branches of the postal service, and with furnishing information for the settlement of all governmental mileage and telegraph accounts; the office of the superintendent and disbursing clerk, to which is assigned the supervision of all repairs, the care of the public property in and the furnishing of the departmental building, and the disbursement of the salaries of the officers and employes of the department; the office of the chief special agent, to which are referred all cases of losses or irregularities in the mails, and all reported violations of the postal law; and the division of special agents and mail depredations, to which are referred all accounts of special agents for salary, per diem, and allowance.

The Office of the First Assistant Postmaster-General.—To this office is assigned the duty of preparing all cases for the establishment, discontinuance, and change of name or site of post-offices, and the appointment of all postmasters and employes of the railway mail service, and all correspondence incident thereto; the duty of readjusting the salaries of postmasters, and the consideration of allowances for rent, fuel, and lights,

clerk-hire and miscellaneous expenditures; of receiving and recording appointment of receiving, entering, and filing bonds and oaths of postmasters, and issuing their commissions. This office is also charged with the correspondence with postmasters and the public upon questions relating to the character and classification of mail matter and the rates of postage thereon, under the direct supervision of the law clerk of the department. To it is attached the division of free delivery, having in charge the preparation of cases for the inauguration of the system in cities, the appointment of letter-carriers, and the regulation of allowances for incidental expenses, as well as the general supervision of the free-delivery system throughout the United States; also the blank agency, to which is assigned the duty of supplying the post-offices with blanks thereto with blanks, wrapping-paper, and twine, letter balances, and cancelling stamps, and the department with stationery.

The office of the Second Assistant Postmaster-General.—To this office is assigned the business of arranging the mail service of the United States and placing the same under contract, embracing all correspondence and proceedings respecting the frequency of the mode of conveyance, and times of departures and arrivals on all the routes, the course of the mails between the different sections of the country, the points of mail distribution, and the regulations for the government of the domestic mail service of the United States. It prepares the advertisements for mail proposals, receives the bids, and is in charge of the annual and miscellaneous mail lettings, and the adjustment and execution of the contracts. All applications for mail service or change of mail arrangements, and for mail messengers, should be sent to this office. All claims should be submitted to it for transportation service. From this office all postmasters at the end routes receive the statement of mail arrangements prescribed for the respective route. It reports weekly to the auditor all contracts executed and all orders affecting the accounts for mail transportation; prepares the statistical exhibits of the mail service and the reports to Congress of the mail lettings, giving the statement of each bid; also of the contracts made, the new service originated, the curtailments ordered, and the additional allowances granted within the year. The rates of pay for the transportation of the mails on railroad routes, according to the amount and character of the service, are adjusted by this office. To it is attached the division of inspection, to which is assigned the duty of receiving and inspecting monthly registers of arrivals and departures, reporting the performance of mail service; also special reports of failures or delinquencies on the part of mail contractors or their agents, and of noting such failures or delinquencies, and preparing cases of fines or deductions by reason thereof; conducting the correspondence growing out of reports of failures or delinquencies in the transportation of the mails—

Mr. TOTTEN. [Interposing.] Allow me to interrupt you. I have been following you, and, I think, you have skipped something.

Mr. BLISS. I skipped the paragraph about the issuing of mail routes &c., as it has nothing to do with this case.

Mr. TOTTEN. All right.

Mr. BLISS. [Continuing to read:]

of reporting to the Auditor of the Treasury for the Post-Office Department, at the close of each quarter, by certificate of inspection, the fact of performance or non-performance of contract or recognized mail service, noting therein such fine or deduction as may have been ordered: of authorizing the payment of all employes of the railway mail-service; also the payment of such acting employes as may be employed by the office through the superintendent of railway mail service in cases of emergency, as of authorizing the auditor to credit postmasters with sums paid by them for such temporary service; and such other duties as may be necessary to secure a faithful performance of the mail service. All complaints against mail contractors, or their agents relating to the failures or other irregularities in the transportation of the mails, whether by postmasters or others, should be promptly forwarded to the Second Assistant Postmaster-General, marked "Division of inspection."

I think that is all I desire to call attention to in the regulations.

JAMES LAWRENSEN sworn and examined.

By Mr. KER:

Question. Are you employed in the Post-Office Department?—Answer. I am, sir.

Q. In what capacity?—A. I am employed in making up the annual reports of star lettings each year for transmission to Congress.

Q. Are you a notary public?—A. Yes, sir.

Q. Did you administer the oath of office to Mr. Brady?

Mr. WILSON. Oh, we will admit that he was sworn in as Second Assistant Postmaster-General.

A. I have sworn in all the Assistant Postmasters-General. I do not recollect Mr. Brady in particular.

Q. [Submitting a paper.] Look at that paper. Is that the oath you administered to Mr. Brady?

Mr. WILSON. You had better take our admission. You can't prove it by this witness.

A. Yes, sir. The reason there is no seal, I was at that time justice of the peace.

Q. [Submitting paper to witness.] Is that the oath you administered to William H. Turner?—**A.** Yes, sir.

Mr. BLISS. It is dated the 20th of July, 1865.

Mr. WILSON. What is the use of putting them in the record? We will admit them.

Mr. BLISS. Do I understand your admissions to extend also to the oaths of office of Mr. Maynard and Mr. Key?

Mr. WILSON. Certainly.

The WITNESS. Mr. Maynard and Mr. Key and eighteen Postmasters-General have been sworn in by me.

Mr. INGERSOLL. For the purposes of this trial we will admit that Hayes was President.

Mr. TOTTEN. Will you join in that, Mr. Merrick?

Mr. MERRICK. I am trying this case now.

The COURT. That conspiracy is over.

Mr. MERRICK. The conspiracy in that case was closed some time since.

By Mr. TOTTEN:

Q. Who was the first Postmaster-General sworn in by you?—**A.** Cave Johnson, of Tennessee, sir.

Q. You have sworn every one in since, have you not?—**A.** Every one of them since; eighteen in number.

Mr. TOTTEN. I think you ought to have a pension.

Mr. BLISS. Your admission is that these gentlemen not only were sworn in but acted as such from the date of their oaths?

The COURT. The court takes judicial notice of all public officers, of who is the present Postmaster-General, the present Attorney-General, and so on, and when they were appointed, and how long they served.

Mr. WILSON. We think so, your honor, and therefore it is not necessary to occupy any time on that subject.

Mr. BLISS. The court would not take judicial notice of the appointment of Mr. Turner, I apprehend.

Mr. KER. We now propose, your honor, to offer in evidence these proposals and contracts that have been admitted by the other side to be the contracts and proposals in this case.

Mr. INGERSOLL. We admit that they are on the record.

Mr. MERRICK. There were two statements made. First brother Wilson admitted it, and then it was withdrawn.

The COURT. I understood the admission to be that those papers came from the files of the department but their execution was not admitted.

JOHN L. DORRIS sworn and allowed to stand aside.

Mr. MERRICK. I believe the purpose Mr. Ker has now in view is to

prove the execution of these contracts. I submit to your honor that it is not necessary to go into that evidence. They came from the department and they are papers in the department, and that is, I think, sufficient proof of their execution. It will be followed by testimony that they have been acted on by the parties and the department, and I presume it is hardly worth while to take up some time in proving the execution of the contracts.

The COURT. There is some provision in the statute on the subject.

Mr. MERRICK. I have sent for the statute.

The COURT. According to my recollection the statute makes a copy competent in court, and it provides for any one wishing to contest the execution of the original, or to have the original produced in court. Whether it goes further and makes the production of the original *prima facie* evidence of its execution, I am not able to say.

Mr. MERRICK. I think that it does. I have sent for the section. It provides that any books, papers, or records on file in any of the executive departments may be proved by certified copies. If they are certified copies of the papers from the files of the department that proves, of course, the execution of that paper. If it is necessary to look at the original, or it is controverted, the original can be brought in. We preferred to bring in the original to save all trouble.

The COURT. If it were otherwise the copy would be better than the original.

Mr. MERRICK. The right to prove by copies is given simply as a convenience, and the original, when brought in by the officers of the department, has greater effect as the original inquired into in that regard.

The COURT. You have sent for the statute?

Mr. MERRICK. I have sent for the statute.

Mr. BLISS. Your honor, I suppose we may properly offer these in evidence as a portion of the records of the department. As to whether there is anything in them sufficient by itself to prove their execution, or to bind these defendants, is a matter which is to be considered hereafter—whether that is sufficiently proved by the evidence of their acting under the contracts, or whether we shall go on and prove in detail the execution of each. At any rate, as records of the department, we apprehend that they are admissible. Whether they prove the point mentioned is another question.

The COURT. Yes; but the court cannot admit the records of the department here, because they are records.

Mr. BLISS. No, sir; but what I say is that they are records of the department, which we expect to show to your honor by subsequent evidence, are pertinent to this case.

The COURT. They might go in if the other side did not object; but they have objected, and want to know the pertinency of them.

Mr. BLISS. Then I say that we propose to show subsequently that these parties acted under these contracts, received money under them for the performance of them, and corresponded with the department with reference to them, treating them as valid contracts.

The COURT. Let us hear, now, what the statute says.

Mr. MERRICK. [Quoting:]

Copies of any books, records, papers, or documents in any of the executive departments, authenticated under the seals of such departments, respectively, shall be admitted in evidence equally with the originals thereof.

And the copy is admitted because it is a record and certified to be a record.

The COURT. Let us see further what provision is made as to the originals themselves, in case anybody wants the original.

Mr. MERRICK. There is a provision that an original may be brought in when it is questioned. I have not the memorandum of that provision, your honor, but Mr. Bliss will find it. I think there is a provision of that sort. Now, if we had certified copies, they would be quite sufficient. The originals are brought directly from the department, traced back there, and shown that they came from there here, which is a little bit better than the certificate that they are there. The certificate would necessitate copying them out, and there would have been a great deal of writing as there are a great many papers, and we thought the shorter plan was to bring in the originals.

The COURT. I want to have the statutory provisions on this point before me.

Mr. BLISS. I do not recall any other provision of the statute as to the evidence of the originals. There may be one, but I do not recall it.

Mr. MERRICK. It is simply that the originals may be brought in.

The COURT. It is simply under the head of evidence. Gentlemen of the other side, have you any objection to the receiving of these documents?

Mr. HINE. I do not suppose there is any special mystery about the view of proof in the introduction of any paper, whether it is a paper under seal or a contract. I need not call attention to the fact that in the absence of any statutory provision, they can introduce these only when they shall have proved the execution of the papers by the subscribing witnesses. The overshadowing reason, however, that appears to us to make this objectionable is that they have nowhere described the contracts so far as I have been able to examine. I have only examined one. I take it for granted they are all substantially the same. They have nowhere described in their indictment the contract that they now propose to introduce in evidence. It seems the indictment that they throw at us is one that was made and signed and entered into at different dates by different parties. The time then of the delivery of the contract, or the time of its completed execution ready for delivery, if it was the intention of the parties to deliver it, would of course, have effect. The contract that I have examined bears date the 15th of March, 1878. They allege the execution of these contracts under *ridelicet* it is true; the force of that is well known. But when I follow along to ascertain when the parties came together, when there was a mutuality between them, I find they were executed by different contractors at different dates, some two or three months subsequent to that time. And when we find the allegation in the indictment that the contract was made, signed, and entered into on the 15th of March, and they offer to introduce in evidence, as proof of that, a contract that was made, signed, and entered into months later than that, we say that they have not advised us by any means of the contract that they propose to hurl at us. If they had said to us that it was a contract entered into at any of these dates, that we signed it, then we would have known something about it possibly; would have been advised so that we could admit it if we desired; but inasmuch as they say or propose to introduce against us a contract made, signed, and entered into by us on the 15th of March, and then they bring in a contract that appears on its face was entered into two or three or four months subsequent to that time, it is not only unfair, but it is incompetent for them to prove such a paper. That is the objection, very briefly, I have to it.

The COURT. Who are the parties to this paper ?

Mr. BLISS. The one I happen to hold in my hand reads : "This article of contract, made March 15, 1878, between the United States of America, acting in this behalf by the Postmaster-General, and John W. Dorsey, contractor."

Mr. WILSON. What is the number of the route ?

Mr. BLISS. No. 35015, and it is signed by the parties.

Mr. WILSON. When ?

Mr. BLISS. I am going to state it. That is signed by the parties.

The COURT. What parties ?

Mr. BLISS. Mr. Key, the Postmaster-General, and Mr. Dorsey. And it says, "Signed this 28th day of March, 1878." The sureties signed even later. The oath is taken by Mr. Dorsey.

Mr. INGERSOLL. When ?

Mr. BLISS. The 28th of March, 1878.

The COURT. What is the object of it ?

Mr. BLISS. It is the contract under which this service was performed.

Mr. TOTTEN. When was it filed ?

Mr. BLISS. It has on it, "Contract office, April 15, 1878."

The COURT. Which particular service ?

Mr. BLISS. This is route 35015, from Vermillion to Sioux Falls.

The COURT. Is that one of the routes described in the indictment ?

Mr. BLISS. This is one of the routes described in the indictment. I took it up as a specimen of all of them. They are all in that same general form, and in that same general way. If the objection is that they are not properly executed—if the execution is not properly proved—that is one thing, and the objection suggested by Mr. Hine is another. I suggest that we pass upon one at a time.

Mr. INGERSOLL. I desire to be heard on the first one just a moment.

In the case of *Black vs. The United States*, 7 Court of Claims, the plaintiff offered in evidence a paper found in the files of the War Department, purporting to be made by the military governor of Opelousas. It was authenticated under seal, but ruled out as evidence. The court sustained the objection, on the ground that:

Under these several statutes all the different departments, including the offices of the Solicitor of the Treasury and the Attorney-General, are authorized to have and to use official seals, and under them, respectively, to authenticate copies of the books, papers, and documents in their several departments. The language employed in all the acts is substantially the same as that used by the common law writers in respect to the same subject, and must be understood and interpreted by the same reasons that govern at the common law.

Transcripts from the records or books of the different departments, when authenticated by the seal of such department, are evidence both at the common law and by statute; but the records, "*documents, and papers*" used in the several acts of Congress cannot be held to mean every document or paper on file in the department, but only such as were made by an officer or agent of the Government in the course of the discharge of his official duty. Any other rule of interpretation would defeat the reason on which all public writings are admissible as evidence, i. e., that they have been made by authorized and accredited agents, appointed for the purpose, and that the subject-matter of such writings is of a public nature.

Official documents duly certified need no further proof; but other documents so certified do not by the mere fact of certification become so authenticated as to entitle them to be received as evidence if they are objected to; *but the originals must be produced and proved according to the course of the common law.*

Applying the rules already laid down to the case under consideration, it is obvious that a copy of a paper purporting to be signed by Colonel Chickering, and ruled upon by the claimant to prove the amount of cotton claimed in this suit, is not admissible without proof of its execution. The original paper, if executed at all, was not such an official paper as it was the duty of Colonel Chickering to return to the War Department. It belonged properly to the claimant, and was his private paper, and by him placed in the War Department, and a copy thereof, produced under the certificate and seal of

that department, and offered in evidence in his own behalf without proof of its execution.

The certificate and seal of the department did not prove the due execution of the paper, and the claimant was bound, if he used it at all, in evidence, to produce the original, and prove it according to the course of the common law.

Now, taking the decision in this case, my opinion is that any paper coming from the Post-Office Department that has been executed by one of the officers in the regular and due course of business is *prima facie* good. I think *prima facie* that is a good document.

Now the next question arises, and that is, as to the date of these documents. Under this indictment they charge that on the 15th day of March, 1878, this contract was made. They are bound by the paper they set out in their indictment. They give us a date, they give us an ear mark, so that we may know what contract we have to meet. Now, when we look upon the contract, the one they now offer, it was not made on that date. It is not the contract described in their indictment. It has nothing to do with it. There may be other contracts of the date they describe, and I think that we are entitled to presume there are, as the grand jury said there were, and as the writer of the indictment also said there were. Now, I object to each one of these contracts unless it bears the date set out in the indictment. They cannot under a clause stating that a contract was made on the 15th of March, introduce one made on the 28th of March, because there are many contracts. We want to know which one. They must comply with their indictment, with their pleading.

The COURT. Is this paper now offered for the purpose of making out an overt act or for the purpose of connecting it in proof for committing a conspiracy?

Mr. MERRICK. It is offered for the purpose of showing the contract made between the party and the United States, under which contract, in the course of its execution, certain overt acts took place. The contract itself is not an overt act. That is all right enough. There is nothing criminal about that. It is simply to show that they made the contract, and we will show, of course, in connection with the contract now offered, that they acted under the contract, and drew money under the contract, and did a great many things that were proper and a great many that were improper.

The COURT. Yes; I understand it now.

Mr. INGERSOLL. Now, here is this contract. If I understand this indictment at all, it was a part of the conspiracy to make this contract. It was a part of the conspiracy to make the bids. It was a part of the conspiracy, of course, to make the contract or to give the bond. This is only the machinery of the conspiracy, if there was a conspiracy. If it was an honest thing, they were the documents necessary to make to carry out an honest thing. But when a conspiracy is proven, then the making of this contract is an overt act. Now, let us see the date of this. This is dated here March 15. I turn over and I find when this was signed. It was signed "this 28th day of March, 1878," by John W. Dorsey. Mr. Wheeler went the surety on the 8th of April, and Mr. Hoyt was surety on the 8th of April; but I find that Dorsey signed it on the 28th day of March. Now, that was not and that is not a contract entered into on the 15th of March, 1878, consequently it is not the contract mentioned in that indictment.

The COURT. What is the date of the contract?

Mr. INGERSOLL. The date of the contract is the 28th day of March.

Mr. MERRICK. [Quoting from the contract.] "This contract made on March 15th, 1878, between the United States of America," &c.

The COURT. It is described according to the date in the body of the indictment.

Mr. INGERSOLL. "This contract made March 15th, 1878." Now, it is signed by Mr. Key, and I suppose signed on that day. I do not know. It appears to be a blank. Then, on the 28th day of March, John W. Dorsey signed it. That is the day it became a contract. It is the old story of how many legs a calf would have if you called his tail one.

The COURT. If I understand the indictment, it does not undertake to say that John W. Dorsey signed it on a certain day, but the day the contract bears date.

Mr. INGERSOLL. Well, as far as that is concerned, it was signed by Dorsey on the 28th day of March. The contract itself says: "This article of contract made March 15th, 1878."

The COURT. And that is the date set out in the indictment?

Mr. INGERSOLL. Yes, sir.

The COURT. I overrule that point.

Mr. INGERSOLL. Just see what the indictment says:

The grand jury aforesaid, upon their oath aforesaid, do further present, that heretofore, to wit, on the 15th day of March, in the year of our Lord one thousand eight hundred and seventy-eight, at the county and District aforesaid, and within the jurisdiction of the said court, the said Postmaster-General, by the said Second Assistant Postmaster-General, in the name and on the behalf of the said United States of America, did make, sign, and enter into seven certain contracts and agreements between the said United States of America and one John W. Dorsey, bearing date the day and year aforesaid, wherein and whereby the said John W. Dorsey did contract, covenant, and agree, &c.

The COURT. It refers to the contract, and that is all there is of it.

Mr. INGERSOLL. There is another point—because we don't want to get out of points:

That heretofore, to wit, on the said 15th day of March, in the year of our Lord one thousand eight hundred and seventy-eight, at the county and District aforesaid, and within the jurisdiction of the said court, the said Postmaster-General, by the said Second Assistant Postmaster-General, in the name and on the behalf of the said United States of America—

Did make this contract. Well, that is not true. This contract is not signed by the Second Assistant Postmaster-General. The Postmaster-General has not made this contract through the Second Assistant. It is signed "D. M. Key, Postmaster-General."

Mr. BLISS. Which name was affixed by the Second Assistant Postmaster-General.

Mr. INGERSOLL. Have sworn. This is made by D. M. Key, and he was the Postmaster-General. It is not made by the Second Assistant for the Postmaster-General, and it does not purport to have been so made. I want that point.

Mr. HINE. The contract itself sets up the date when it was signed.

The COURT. It is described, though, in the indictment as bearing date the 15th of March.

Mr. HINE. I beg your honor's pardon. "This article of contract made March 15th." That is all it states. The indictment states, "Made, signed, and entered into." Now, if it did not bear upon its face a different date from what it bears in its premises, then we could say it was the contract made at that time. But it bears upon its face language like this, "Signed this 28th day of March, 1878, John W. Dorsey;" "Signed this 8th day of April, 1878," by Wheeler and by Hoyt, and under these contracts a bond is given. So that you cannot

say that a contract was made, that is, had force, until the time the bond was filed. That I apprehend to be the rule.

Mr. BLISS. Your honor, with reference to——

The COURT. [Interposing.] I do not care about hearing you. The indictment does not purport to say when the contract went into effect. It refers to the contract as bearing date, so and so. Referring to the first page of this contract, you will find that it does bear date according to this description. I shall overrule that objection.

Mr. HINE. We take an exception.

The COURT. The other question I have had more difficulty in my mind in regard to. But I think when the act of Congress makes a certified copy of such a paper as this evidence that the original itself is evidence when it is proved to have been brought from the depository of the Government.

Mr. INGERSOLL. And executed by an officer in the regular way.

The COURT. It is not necessary to prove it was executed by an officer. It is brought from the proper depository of the Government, and is one of the records of the department, a certified copy of which would be competent evidence in the court. Now, if the rule were otherwise the certified copy would be better evidence than the original itself. We have the original produced and proved instead of a certified copy. I shall overrule that objection.

Mr. HINE. We desire an exception, if your honor please.

The COURT. Oh, certainly.

Mr. KER. [Referring to the proposals and contracts, and reading therefrom.] The first is a proposal. Route 35015, signed by John W. Dorsey, as bidder. The sureties are John O. Evans and W. B. Moses, executed before A. E. Boone, and witnessed by John R. Miner. The contract is dated March 15, 1878, and is between John W. Dorsey and the United States. The sureties are D. W. C. Wheeler and Samuel M. Hoyt. It is witnessed by A. E. Boone and John R. Miner. It is from Vermillion to Sioux Falls. The description of the route is Vermillion, Dak., by Greenfield, Alsen, Sunnyside, Glenwood, Brooklyn, Kidder, Maple Grove, Burleigh, and Huron, to Sioux Falls and back, once a week, for \$398 each year.

The next route is 38113; proposal of John W. Dorsey. The sureties are John O. Evans and L. S. Filbert; witnessed by A. E. Boone and J. R. Miner. The contract is dated March 15, 1878, and is between John W. Dorsey and the United States. The sureties are D. W. C. Wheeler and S. M. Hoyt; witnessed by A. E. Boone and John R. Miner. The route is from White River, Colo., by Windsor and Dixon, to Rawlins and back, once a week, for \$1,700 each year.

The proposal on route 38145 is by John W. Dorsey; John O. Evans and J. H. Watts sureties; witnessed by A. E. Boone and John R. Miner. The contract is dated March 15, 1878, between John W. Dorsey and the United States; the sureties are D. W. C. Wheeler and Samuel M. Hoyt; witnessed by A. E. Boone and John R. Miner. The description of the route is from Garland, Colo., by Conejos, Ojo Caliente, El Rito, Puna Amarilla, Parkview, Florida, and Animas City, to Parrott City and back, once a week, and the amount is \$2,745 each year.

Mr. BLISS. You need not read the intermediate stations.

Mr. WILSON. The intermediate stations oftentimes indicate the character of the route.

Mr. BLISS. Read them.

Mr. KER. [Continuing.] Proposal on route 38152 of John W. Dor-

sey; sureties, J. O. Evans and L. S. Filbert; witnessed by A. E. B. and John R. Miner. The contract is dated March 15, 1878, between John W. Dorsey and the United States; sureties, D. W. C. Wheeler and S. M. Hoyt; witnessed by A. E. Boone and John R. Miner. The route is from Ouray, Colo., by Hot Springs, to Los Pinos and back, once a week, at \$348 each year.

Proposal on route 38156, of John W. Dorsey; sureties, J. O. Evans and L. S. Filbert; witnesses, A. E. Boone and J. R. Miner. The contract is dated March 15, 1878, between John W. Dorsey and the United States; sureties, D. W. C. Wheeler and S. M. Hoyt; witnessed by A. E. Boone and John R. Miner. The route is from Silverton, Colo., by Nicero and Hermosa, to Parrott City and back, twice a week, at \$1,488 each year.

Route 40104. The proposal is not attached, but we will offer it at a subsequent time. The contract is dated March 15, 1878, between John W. Dorsey and the United States; sureties, D. W. C. Wheeler and S. M. Hoyt; witnessed by A. E. Boone and John R. Miner. The route is from Mineral Park, Ariz., by Saint Thomas and San Joseph, to Pioche and back, once a week, at \$2,982 each year.

Proposal on route 40113, by John W. Dorsey; sureties, J. O. Evans and L. S. Filbert; witnesses, A. E. Boone and J. R. Miner. The contract is dated March 15, 1878, between J. W. Dorsey and the United States; sureties, D. W. C. Wheeler and S. M. Hoyt; witnessed by A. E. Boone and John R. Miner. The route is from Tres Alamos, Ariz., by Camp Grant, Goodwin, Camp Thomas, and Safford, to Clifton and back, once a week, at \$1,568 each year.

Proposal on route 35051, of John R. Miner; sureties, J. T. Child and J. B. Eads; witnessed by A. E. Boone and M. C. Rerdell. The contract is dated March 15, 1878, between John R. Miner and the United States; sureties, D. W. C. Wheeler and Samuel M. Hoyt.

Mr. MERRICK. Are you not mistaken about those sureties?

Mr. KER. No, sir.

Mr. MERRICK. I thought those were Dorsey's sureties.

Mr. KER. Oh, you will find the same on all of them. It is witnessed by A. E. Boone and J. J. Bainard. The route is from Bismarck, D. T., by Yellowstone, to Tongue River and back, once a week, at \$2,350 a year.

Route 38134. The proposal is not here. The contract is dated March 15, 1878, between John R. Miner and the United States; sureties, D. W. C. Wheeler and S. M. Hoyt; witnessed by J. W. Dorsey and A. A. Frederick; route from Pueblo, Colo., by Greenwood, to Rosita and back, once a week, at \$388 each year.

Proposal on route 38135, of John R. Miner; sureties, J. O. Evans and J. H. Watts; witnessed by A. E. Boone and C. M. Cook. The contract is dated March 15, 1878, between John R. Miner and the United States. The sureties are D. W. C. Wheeler and S. M. Hoyt; witnessed by J. W. Dorsey and A. A. Frederick. The route is from Saint Charles, Colo., by Muddy Creek, to Greenhorn and back, twice a week, at \$548 a year.

Proposal on route 38140, of John R. Miner; J. O. Evans and J. H. Watts, sureties; witnessed by A. E. Boone and C. M. Cook. The contract is dated March 15, 1878, between John R. Miner and the United States; sureties D. W. C. Wheeler and S. M. Hoyt; witnessed by J. W. Dorsey and A. A. Frederick. The route is from Trinidad, Colo., by Barcla and San José, to Madison, N. Mex., and back, once a week, at \$328.

On route 38150. The proposal is not here. The contract is dated March 15, 1878, between John R. Miner and the United States; sureties D. W. C. Wheeler and S. M. Hoyt; witnessed by J. W. Dorsey and A. A. Frederick. The route is from Saguache, Colo., by Rock Cliff, Cochetopa, White Earth, and Barnum, to Salt Lake City and back, three times a week, at \$3,426 each year.

Route 34149. The proposal is not here. The contract is dated March 15, 1878, between John M. Peck and the United States; the sureties are Samuel M. Hoyt and D. W. C. Wheeler; witnessed by George P. Fall and A. E. Boone. The route is from Kearney, Nebr., by Prairie Center, South Loup, Centennial, Sweet Water, Cedarville, Loup City, Arcadia, Douglass Grove, and Longwood, to Kent and back, once a week, at \$868 each year.

Route 41119. Proposal of J. M. Peck; sureties, J. O. Evans and L. S. Filbert; contract dated March 15, 1878, between John M. Peck and the United States; sureties, Samuel M. Hoyt and D. W. C. Wheeler; witnessed by George P. Fall and A. E. Boone. The route is from Toquerville, Utah, by Virgin City, Windsor, Kanab, Johnson, and Pahreah, to Adairville and back, once a week, at \$1,168 each year.

Route 44155. Proposal of John M. Peck; sureties, J. O. Evans and J. Van Buskirk. The witnesses are A. E. Boone and J. R. Miner. The contract is dated March 15, 1878, between John M. Peck and the United States; sureties, Samuel M. Hoyt and D. W. C. Wheeler; witnessed by George P. Fall and A. E. Boone. The route is from The Dalles, Oregon, by Deschutes, Bake Oven, Antelope, Bridge Creek, Monument, Camp Watson, Dayville, Canyon City, Prairie City, Penola, Sumter, and Auburn, to Baker City and back, twice a week, at \$8,288 each year.

Route 44160. Proposal of John M. Peck; sureties, J. O. Evans and W. B. Moses; witnessed by A. E. Boone and J. R. Miner. The contract is dated March 15, 1878, between John M. Peck and the United States; sureties, Samuel M. Hoyt and D. W. C. Wheeler; witnessed by George P. Fall and A. E. Boone. The route is from Canyon City, Oreg., by Camp Harney and Alvord, to Camp McDermott and back, once a week, at \$2,888 each year.

Route 46132. Proposal of John M. Peck; sureties, J. O. Evans and W. B. Moses; witnesses, A. E. Boone and J. R. Miner. Contract dated March 15, 1878, between John M. Peck and the United States; sureties, Samuel M. Hoyt and D. W. C. Wheeler; witnessed by George P. Fall and A. E. Boone. Route from Julian, Cal., by Warner Ranch, Oak Grove, Temecula, and San Jacinto, to Colton and back, once a week, at \$1,188.

Route 46247. The proposal is not here. Contract dated March 15, 1878, between John M. Peck and the United States; sureties Samuel M. Hoyt and D. W. C. Wheeler; witnessed by George P. Fall and A. E. Boone. Route from Redding, by Millville, Oak Run, Round Mountain, Burney Valley, Fall River Mills, Burgettville, Argusville, Bieber, Adin, Canby, and Clover Swale, to Alturas, one hundred and seventy-nine miles and back, twice a week, at \$5,988.

Route 44140. Proposal of John M. Peck; sureties J. O. Evans and W. B. Moses; witnessed by A. E. Boone and John R. Miner. Contract dated March 15, 1878, between John M. Peck and the United States; sureties, Samuel M. Hoyt and D. W. C. Wheeler; witnessed by George P. Fall and A. E. Boone. The route is from Eugene City, Oreg., by Springfield, Thurston, Waltherville, Leaburgh, Gate Creek, McKenzie Bridge, Camp Polk, Primeville, Upper Ochoco, Howard, and Mitchell,

to Bridge Creek, one hundred and seven miles and back, once a week, at \$2,468 a year.

Mr. BLISS. Those contracts, gentlemen of the jury, all refer to a performance to be made in accordance with the advertisement. Therefore the only way of getting at the matter is to refer to the advertisement:

Route 34149, from Kearney to Kent. Leave Kearney Monday at 6 a. m.; arrive at Kent Wednesday by 6 p. m. Leave Kent Thursday at 6 a. m.—

Mr. WILSON. That is all on the contract.

Mr. BLISS. It is not. That is why I put it in. The contract names neither schedule or time. The number of trips per week is in the contract—

arrive at Kearney Saturday by 6 p. m.

Mr. WILSON. [Referring to the contracts.] Here are the arrivals. The whole thing is there.

Mr. BLISS. Oh, the schedule is there; but it says, "To be performed in accordance with the advertisement." Annexed to the contracts are certain schedules of departures and arrivals, which the power is reserved to change, but the advertisement is referred to in the contract, and can only be changed by expedition, as I apprehend it.

Mr. WILSON. I was only trying to abbreviate. It is all in the contract.

Mr. BLISS. It has not been called attention to; and at any rate I will call attention to it:

35051. Bismarck to Tongue River, two hundred and fifty miles and back, once a week. Leave Bismarck Monday at 6 a. m.; arrive at Tongue River Thursday at 6 p. m. Leave Tongue River Monday at 6 a. m.; arrive at Bismarck Thursday by 6 p. m.

38113. From White River to Rawlins, one hundred and eighty miles and back, once a week. Leave White River Monday at 6 a. m.; arrive at Rawlins Friday by 6 p. m. Leave Rawlins Monday at 6 a. m.; arrive at White River Friday by 6 p. m.

38134. From Pueblo, by Greenwood, to Rosita, forty-nine miles and back, once a week. Leave Pueblo Saturday at 6 a. m.; arrive at Rosita by 9 p. m. Leave Rosita Friday at 6 a. m.; arrive at Pueblo at by 9 p. m.

38140. From Trinidad to Madison, forty-five miles and back, once a week. Leave Trinidad Friday at 6 a. m.; arrive at Madison by 7 p. m. Leave Madison Saturday at 6 a. m.; arrive at Trinidad by 7 p. m.

38145. From Garland to Parrott City, two hundred and eighty-eight miles and back, once a week. Leave Garland Monday at 6 a. m.; arrive at Parrott City in seven days. Leave Parrott City Monday at 7 a. m.; arrive at Garland in seven days.

38150. From Saguache to Lake City, ninety-five miles and back, three times a week. Leave Saguache Monday, Wednesday, and Friday at 6 a. m.; arrive at Lake City next days by 6 p. m. Leave Lake City Monday, Wednesday, and Friday at 6 a. m.; arrive at Saguache next days by 6 p. m.

38156. From Silverton to Parrott City, sixty-nine miles and back, twice a week. Leave Silverton Tuesday and Friday at 6 a. m.; arrive at Parrott City next days by 6 p. m. Leave Parrott City Tuesday and Friday at 6 a. m.; arrive at Silverton next days by 6 p. m.

38152. From Ouray by Hot Springs to Los Pinos, twenty-five miles and back, once a week. Leave Ouray Friday at 6 a. m.; arrive at Los Pinos by 6 p. m. Leave Los Pinos Saturday at 6 a. m.; arrive at Ouray by 6 p. m.

40104. Mineral Park to Pioche, two hundred and thirty-two miles and back, once a week. Leave Mineral Park Wednesday at 6 a. m.; arrive at Pioche Saturday by 6 p. m. Leave Pioche Wednesday at 6 a. m.; arrive at Mineral Park Saturday by 6 p. m.

40113. From Tres Alamos to Clifton, one hundred and ninety-seven miles and back, once a week. Leave Tres Alamos Monday at 7 a. m.; arrive at Clifton Thursday by 7 p. m. Leave Clifton Monday at 7 a. m.; arrive at Tres Alamos Thursday by 7 a. m.

41119. From Toquerville to Adairville, one hundred and thirty-two miles and back, once a week. Leave Toquerville Monday at 6 a. m.; arrive at Adairville Wednesday by 6 p. m. Leave Adairville Thursday at 6 a. m.; arrive at Toquerville Saturday by 6 p. m.

44155. From The Dalles to Baker City, two hundred and seventy-five miles and back, twice a week. Leave The Dalles Monday and Thursday at 4 a. m.; arrive at

Baker City in one hundred and twenty hours. Leave Baker City Monday and Thursday at 4 a. m.; arrive at The Dalles in one hundred and twenty hours.

44160. From Canyon City to Camp McDermott, two hundred and forty-three miles and back, once a week. Leave Canyon City Monday at 8 a. m.; arrive at Camp McDermott Saturday by 6 p. m. Leave Camp McDermott Monday at 8 a. m.; arrive at Canyon City Saturday by 6 p. m.

46132. From Julian to Colton, one hundred and twenty miles and back, once a week. Leave Julian Tuesday at 2 p. m.; arrive at Colton Thursday by 3 p. m. Leave Colton Friday at 6 a. m.; arrive at Julian Sunday by 10 a. m.

46247. From Redding to Alturas, one hundred and seventy-nine miles and back, twice a week. Leave Redding Monday and Thursday at 6 a. m.; arrive at Alturas in one hundred and eight hours. Leave Alturas Monday and Thursday at 6 a. m.; arrive at Redding in one hundred and eight hours.

I believe that covers all these contracts with the exception of 44140. I omitted to read that:

From Eugene City to Bridge Creek, two hundred and seven miles and back, once a week. Leave Eugene City Monday at 8 a. m.; arrive at Bridge Creek Saturday by 6 p. m. Leave Bridge Creek Monday at 8 a. m.; arrive at Eugene City Saturday by 6 p. m.

That, I think, calls attention to all the contracts and the schedules.

JOHN B. SLEMAN sworn and examined.

By Mr. KER:

Question. Are you employed in the Post-Office Department?—Answer. No, sir.

Q. What department are you in?—A. In the Treasury Department.

Q. You are connected with the auditor's office for the Post-Office Department?—A. I am connected with the auditor's office for the Post-Office Department.

Q. What has been commonly called the Sixth Auditor's office, and now the office of the Auditor of the Treasury for the Post-Office Department?

—A. Yes, sir.

Q. How long have you been employed there?—A. Since September, 1870.

Q. What position do you hold?—A. Chief of the pay division.

Q. Have you the contracts or the duplicates for the lettings of 1878, beginning July 1?—A. I have twenty-one contracts which were sent to the auditor's office of the Post-Office Department. [Producing them.]

Mr. BLISS. These are simply duplicates.

Mr. WILSON. So far as General Brady and Mr. Turner are concerned we have not the slightest objection to putting them in evidence.

Q. You got them out of the auditor's office?—A. Yes, sir.

Mr. BLISS. Is there any objection to them? We do not care to put them on the record, but simply to prove that duplicates were filed.

Mr. WILSON. We will admit it.

Mr. INGERSOLL. There is no objection.

Mr. WILSON. What date were they filed?

By Mr. BLISS:

Q. What is the date they were filed in the Sixth Auditor's office?—A. I have not the date; I can produce the date.

Mr. TOTTEN. Mr. Hine is absent. I presume he desires the same exception that was reserved originally.

The COURT. You are safe in saying so.

By Mr. KER:

Q. These are the duplicates of the contracts in the Post-Office Department?—A. The contracts are executed in duplicate, and one copy

is sent to the Auditor and one reserved in the Post-Office Department as I understand it.

Mr. TOTTEN. Then these are originals and not copies ?

Mr. BLISS. They are duplicates.

Mr. WILSON. Let us have it understood.

Mr. BLISS. Look at them.

Mr. WILSON. I do not want to look at them. What I mean to say is that duplicates of all these contracts that were entered into were filed in the Sixth Auditor's office. You may regard that fact as proved, so far as my clients are concerned.

Mr. BLISS. Very well. Mr. Hine is absent. Does anybody represent him ? We do not want to proceed with an admission for only part of the defendants.

Mr. WILSON. I suppose you will allow an exception for him.

The COURT. If he is not here there can be no exception on his part.

Q. Do you know John R. Miner ?—A. Yes, sir.

Q. Is he here ?—A. Yes, sir.

Q. Where is he ?—A. There he is [indicating Mr. Miner].

Q. Do you know John W. Dorsey ?—A. No, sir.

Q. Never have seen him ?—A. Not to know him.

Q. Did you know John M. Peck ?—A. No, sir.

Q. Never have seen him ?—A. Not to know him.

Q. Do you know Mr. Stephen W. Dorsey ?—A. No, sir ; I saw him yesterday. He was then pointed out to me for the first time.

Q. He has never been in your office ?—A. Not to my knowledge.

Q. Do you know Montfort C. Rerdell, otherwise known as M. C. Rerdell ?—A. Yes, sir.

Q. Where is he ?—A. I see the gentleman in court [indicating Mr. Rerdell].

Q. Has Mr. Rerdell been in your office ?—A. Yes, sir.

Q. Has Mr. Miner been in your office in regard to these contracts or the payments connected therewith ?—A. Yes, sir.

Q. And Mr. Rerdell the same ?—A. Yes, sir.

Q. In regard to the contracts and payments under them ?—A. Yes, sir.

Q. I want you to be kind enough to state to the court and jury what is the practice or the rule prescribed or established or used in your office in regard to the mode and manner of payments. First of all, I understand these contracts are sent to your office on an order or change—sent to your office or certified to it ?—A. Certainly ; every change is certified.

Q. By whom ?—A. By the Post-Office Department.

Q. That is, every change that affects the pay ?—A. Yes, sir ; and other changes.

Q. What course is pursued in order to draw the money due on these contracts ; are they paid monthly, or quarterly, or how ?—A. Settlements are made quarterly.

Q. What do you call your fiscal year ?—A. From July 1 to June 30.

Q. That is, your appropriations begin on July 1 and end on the 30th of June ; you do not go from January to December ?—A. No.

Q. Now, go on and tell how these payments are made quarterly.—A. The first official knowledge the auditor's office has, is the contract from the contract office, and that is a voucher to make the payment upon. The auditor receives this contract and enters it upon the pay-books of his office, and at the expiration of three months a certificate of service is received from the contract office, inspection division.

Q. That is the Second Assistant Postmaster-General's Office?—A. Yes, sir. That is the evidence that the service has been performed or not performed. Where it has not been performed deductions are made, and when that certificate is received in the auditor's office the account is stated; and if there are any deductions for failures credit is given on the statement——

Q. [Interposing.] Excuse me one moment. You say a certificate. I want you to state to the court and jury what this certificate is.—A. The certificate is that the service has been performed or not performed.

Q. Who is it signed by?—A. By the Second Assistant Postmaster-General.

Q. Go on now.—A. This certificate is necessary to the payment under this contract. When the certificate is received the account is stated and the contractor is credited with the amount of his quarterly pay, and he is charged with any deductions or fines that are recorded on the certificate against the route or the contractor. Then the account is certified to the Postmaster-General as to the balance due the contractor.

Q. Suppose there is a subcontractor; how do you know who is to receive the money?—A. I know, because the contractor has obtained from the Postmaster-General permission to sublet his contract, and notification of the filing of the subcontract in the contract office is received in the auditor's office.

Q. How is the payment made on the subcontract?—A. In that case the payment is made to the subcontractor for the amount of the subcontract, if it does not exceed the amount of the original contract.

Q. If it names the whole of the contract price, you give it all to the subcontractor?—A. The subcontract is a lien against the contract, and it is paid from the amount stated if it does not exceed the original contract price.

Q. If it is for less than the contract price, how do you do then?—A. Then we pay the subcontractor the amount due under his subcontract, and charge that against the contractor.

Q. What becomes of the balance?—A. The balance goes to the contractor.

Q. Now, then, a subcontract being filed, and you having received a certificate of fines and deductions for non-performance of service, how do you regulate the payment of them, or the deduction from the account; from whose account do they come, the subcontractor's or the contractor's?—A. The notice received in the auditor's office of the filing of a subcontract in the contract office bears this provision, "subject to fines and deductions;" and then the fines and deductions recorded against that route are charged against the subcontract in every case.

Q. That lessens the subcontractor's pay so much?—A. Yes, sir.

Q. It does not affect the pay of the contractor at all does it?—A. Not at all.

Q. Now, in case the fines and deductions amount to more than the actual quarterly pay of the subcontractor what do you do?—A. That wipes the subcontractor out, and we disregard him altogether, and charge the deduction against the contractor. Instead of charging the subcontractor's pay against the contractor we charge the deduction when this deduction is in excess of the amount of the subcontractor's pay.

Q. That is, you first consider the subcontractor and the balance is taken off of the contractor?—A. Yes, sir.

Q. Are there any other persons that receive the warrant or certificate except the contractor or subcontractor—that is, in case I wanted to buy a

claim of somebody could I purchase it by getting a warrant or anything of that kind?—A. If you were a contractor and you wanted to hypothecate your pay—

Q. [Interposing.] I would not like to be a contractor; but could I buy a contractor's claim; is it assignable?—A. Contractors issue drafts in favor of other parties, and those parties file their drafts in the auditor's office, and they are paid, if there is no objection raised to their payment.

Q. The contractor can go to your office and get what is called a post-office draft?—A. An auditor's draft.

Q. And take that and sign it, and give it to me?—A. Yes, sir.

Q. And I can go and file it in your office, and claim the warrant to the extent of the draft?—A. Yes, sir.

Q. Then, if there is a surplus due the contractor over what was given to me, what becomes of that surplus?—A. It goes to the contractor.

Q. Now, having arrived at the statement of who is entitled to the money, the subcontractor in one case, and the balance to the contractor or the assignee who has filed the draft or warrant, do you issue separate warrants or a consolidated warrant for the whole; suppose there are three persons interested—the contractor, the subcontractor, and an assignee?—A. We issue drafts in every case; three warrants.

Q. Drawn in the name of the proper persons?—A. Yes, sir.

Q. Are these drafts issued by you or out of your office?—A. The drafts are drawn by the Third Assistant Postmaster-General.

Q. Then I have gone too fast. How does the Third Assistant know how to draw the draft?—A. He draws them on the report of the auditor.

Q. You certify to the Third Assistant the amount of money that is given each person?—A. Yes, sir.

Q. For instance, on route 40105, \$4,900, subcontractor so much, and so on?—A. Yes, sir.

Q. You certify merely to the Third Assistant Postmaster-General the amount due each?—A. Yes, sir; we designate who the payees are in each case.

Q. And they have to go to the Third Assistant's office to get the warrants?—A. Yes, sir.

Q. Do you know who the warrants are drawn upon?—A. They are drawn upon the Treasurer and assistant treasurers of the United States.

Q. For public money?—A. Yes, sir. That has been since October 1, 1881.

Q. What was done prior to that?—A. Payments were made by drafts on other postmasters.

Q. And how else?—A. And by collection orders. Up to June 30, 1880, payments to contractors were made by collection drafts on postmasters on the line of the routes.

Q. That is, if they had the money?—A. Yes, sir; the balances due the United States in the hands of postmasters on the routes. Collection orders were sent out by the auditor to the contractors, and they presented them to the postmasters, and in that way collected a part of the money.

Q. And the deficiency?—A. The balance was paid either by draft on some draft office, or by warrant on the Treasury.

Q. What do you mean by a draft office?—A. A draft office is one where moneys are deposited by smaller offices, and the department draws on the draft office.

Q. That is, they are designated by the department to receive money?

—A. And to pay out money, to receive and pay out money.

Q. And if there is a deficiency in the office, and they cannot get the money from that depository, how do they get the balance?—A. The balance is paid by draft or warrant from the department.

Q. On the Treasury of the United States?—A. Yes, sir.

Q. This money that was deposited in the post-offices designated as depositories, is public money, is it not?—A. Yes, sir.

Q. The receipts of the office?—A. Receipts from different offices deposited in one office.

Q. When these drafts, and orders, and warrants, for money that are given to the contractors from the Third Assistant's office are paid, are they returned to you, or returned to him after payment?—A. After payment they are returned to the auditor's office.

Q. That is, to your office?—A. Yes, sir.

Q. The Third Assistant's warrants come back to you?—A. Yes, sir.

Q. And you have them in your possession?—A. They are a part of the vouchers of the auditor's office that the money has been paid.

Q. In that way you audit the Second Assistant's office and the Third Assistant's office?—A. We audit all the account for expenditures of any kind in the Post-Office Department for the transportation of the mails, and all miscellaneous accounts of any description.

Q. You have an office in the same building, have you not?—A. Yes, sir.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. You moved recently, did you not?—A. There has been some moving done there, sir.

Q. I understand the course of business in that Sixth Auditor's Office to be this: A duplicate of each contract is filed in the Sixth Auditor's Office. That is your guide as to the amount of pay that is to be given to the contractor each quarter. If any changes are made in the service notice is sent to the Sixth Auditor's Office, so that you are constantly advised as to the extent of the service and the compensation for it. Am I right so far?—A. Right.

Q. Then they have the same kind of a set of books in substance in the Third Assistant's office, have they not?—A. No, sir.

Q. Something quite similar to it have they not; reports as to transportation in the Third Assistant's office?—A. They have the contracts and transportation orders making the changes.

Q. In the Third Assistant's office?—A. Yes, sir; if that is what you mean.

Q. So that substantially they have the same information there that you have in your office?—A. The same, sir.

Q. So that it emanates in the Second Assistant's office and goes to your office, and also to the Third Assistant's?—A. Yes, sir.

Q. And there is in the Second Assistant's office what they call an inspection division, I believe?—A. Yes, sir.

Q. This inspection division keeps track of the manner in which service is performed, and if a contractor or a subcontractor fails to perform his contract according to its provisions the reports of that go to the inspection division, do they?—A. Yes, sir.

Q. And the inspection division make up a statement of the fines or

deductions that are to be made from the pay of the contractor or subcontractor, as the case may be, on account of the failure to perform the service?—A. Yes, sir.

Q. And those fines and deductions made up in the inspection division go through the Second Assistant's office to your office?—A. They emanate in the Second Assistant's office.

Q. They emanate from the inspection division, do they not?—A. Of that office; yes, sir.

Q. You do not suppose that the Second Assistant Postmaster-General himself ever kept track of all these failures to perform the service by contractors or subcontractors?

Mr. BLISS. I object.

Q. He relies upon somebody else, does he not?

Mr. MERRICK. Wait a moment.

Mr. BLISS. Mr. Wilson asks whether he supposes a thing.

The COURT. We want to know the course of business of the office.

Mr. WILSON. Very well.

Q. For all this service all over the country, railroad, steamboat, and star routes, the inspection division keeps track of the failures to perform, does it?—A. I believe so; yes, sir.

Q. And the Second Assistant, getting information in such way as he may, furnishes the Sixth Auditor's office the failures, or deductions and fines on account of these failures?—A. Yes, sir.

Q. And you enter them upon your book, and then having charged up to the contractor or subcontractor in the account the amounts of fines and deductions, you pay the balance?—A. Yes, sir.

Q. Now, then, on whose warrants are these payments made?—A. On warrants issued by the Postmaster-General.

Q. Who signs those warrants?—A. Mr. Hazen, the Third Assistant, signs the warrants.

Q. Has there been any change in that respect recently?—A. The Postmaster-General used to sign the warrants himself.

Q. Up until what time?—A. Since the present Postmaster-General came in I think there has been an act conferring the authority upon the Third Assistant to sign warrants.

Q. That is done under an act of Congress, is it not?—A. Yes, sir.

Q. Prior to the passage of that act of Congress, these warrants were signed by the Postmaster-General himself?—A. Or by the Acting Postmaster-General.

Q. Do you remember the date of the passage of that act?—A. It was a recent act.

Q. Within the last two or three months, was it not?—A. Yes, sir; I think so.

Q. Now, the course of business that you have been describing has prevailed in the Post-Office Department about how long, so far as you know?—A. Since I have been there.

Q. When did you go there?—A. Eighteen hundred and seventy.

Q. Prior to the passage of this act that I referred to a moment ago, I wish you to state whether there was any process by which any money could be drawn out of the Treasury for the payment of mail contractors except upon the warrant drawn by the Postmaster-General?—A. None.

Q. Could any money have been taken out of the Treasury on account of mail service upon any warrant drawn by the Second Assistant Postmaster-General?—A. Not unless he was Acting Postmaster-General.

Q. Then it was the act of the Postmaster-General?—A. Yes, sir.

Q. But the Second Assistant could not draw a warrant to take a dol-

lar out of the Treasury, could he?—A. No, sir; he could not sign any warrant.

Q. Now, from the time that these certificates would come into the Sixth Auditor's Office, and this information would go to the Third Assistant's office how long would it be before any money would be drawn out of the Treasury on account of the service done? Say here is a letting in November, and you enter into contracts in March, and the service goes into operation in July. Now, from the time the contract was made how long would it be before anybody would get any money out of the Treasury on account of that contract?—A. Usually the certificates of service are received from the 10th of October on. The first quarter's payment would be due on the 30th of September. The certificates on which payments were made would be received, commencing about the 10th.

Q. From whom would you receive those?—A. From the Second Assistant's office. As soon as the certificate is received the settlement can be made. The certificate may be received in the morning, the account stated and certified to the Postmaster-General, and it passes into the hands of the Third Assistant, and a warrant is drawn, and the warrant goes to the Treasury, and is returned, and the payment may be made the same day. It generally takes longer than that, but it may be done.

Q. That is, when you expedite your route over there?—A. That is a special case.

Q. But in the ordinary course of business how long would it take?—A. When we are in the height of settlement, perhaps ten days.

Q. Do you know anything of the records of the Postmaster-General himself with reference to these contracts?—A. No, sir; except the contracts. The contracts are our vouchers.

Q. Are you aware of the fact that the Postmaster-General keeps a record which he signs daily, or which purports to be signed daily, showing what is done with these contracts or touching changes in contracts?—A. Any one in connection with the Post-Office Department might know that; we have nothing to do with it officially.

Q. I understood you to say that the settlements would usually occupy about ten days from the time you got the certificate?—A. Yes, sir; sometimes shorter and sometimes longer.

Q. Now, you generally get the certificate about ten days after the close of the quarter, as I understood you?—A. Certificates begin to arrive in the auditor's office about ten days after the close of the quarter, and settlements are made within two months after the close of the quarter. That is provided by law.

Q. So it is drifting along from the time they begin to come in until the two months elapse?—A. We may receive certificates for three or four thousand, but we cannot state the accounts of three or four thousand routes in one day.

Q. That brings me to another thing. These certificates, to the extent of three or four thousand, come from the Second Assistant's office to the Sixth Auditor's Office during the settlement season?—A. Yes, sir.

REDIRECT EXAMINATION.

By Mr. KER:

Q. I want to ask you one or two questions that have developed themselves. You stated that Miner and Rerdell had called upon you in reference to these routes; which routes did Miner call at your office in

reference to; his own or other people's?—A. His own, and wherever he may have had drafts upon others.

Q. In reference to any other routes than his own did he call?—A. I think the books will develop that he has had something to do with other routes.

Q. Whose routes was Rerdell interested in?

Mr. HINE. Produce the books.

Mr. TOTTEN. If Rerdell was interested in Miner's contracts the records will show it, and we want to see it.

Mr. BLISS. The proper question would be as to which route did Rerdell call upon him at his office.

By Mr. KER:

Q. Which set of routes, or which contract, did he call in reference to, Miner, Peck, or Dorsey?—A. I think he was interested in Dorsey's.

Mr. TOTTEN. Don't say interested. That was not the question that was asked you.

The WITNESS. He was in the office. Had no other official standing than that he was authorized to expedite settlements, look after the settlements, to see, I suppose, what certificates were received, and what settlements were in progress.

By Mr. KER:

Q. In that way he called at your office?—A. Yes, sir.

By Mr. MERRICK:

Q. On what routes?—A. Well, I could not name them. The books will show.

Mr. KER. He says that he will tell you hereafter.

Mr. MERRICK. You will look at the books?

The WITNESS. Yes, sir.

By Mr. KER:

Q. There is another point. When you received a notice from the Post-Office Department that the time had been reduced upon a route and the pay increased, in what way was that notice certified to you?—A. Abstracts from the orders for transporting mails are sent to the auditor's office once a week.

Q. By whom signed?—A. The Second Assistant Postmaster-General.

Q. And not by the Postmaster-General?—A. Not by the Postmaster-General.

Q. Then for any expedition upon any of these routes during the time that they were in existence from 1878, the order for an increase came signed by Mr. Brady?—A. Yes, sir.

Mr. TOTTEN. Now, that was a very improper question, your honor. There could not be a more objectionable question than that.

The COURT. Why did you not stop it before he got the answer?

Mr. TOTTEN. I did not understand what he was up to till he got through. I will stop him next time.

By Mr. KER:

Q. Was the same practice observed in regard to increase of service?—A. All orders affecting the transportation of mail are embraced in this weekly abstract of orders.

Q. Certified to your office by Mr. Brady?—A. Certified by the Second Assistant Postmaster-General.

Q. And upon that basis you issued your certificate to the Third Assistant Postmaster-General for payment?

Mr. TOTTEN. Wait a moment. I object to that question.

The COURT. It is certainly as leading as a question possibly can be; but I suppose it is a short way to get at an answer.

Mr. TOTTEN. Well it evidently is, your honor, clearly. He is right about that. Had he not better ask the witness a question that is proper so as to get in the habit of it in the course of time?

The COURT. It is a bad habit. I suppose we are nearly through.

Mr. TOTTEN. That is a question I cannot answer.

The COURT. I am talking to the other side.

Mr. BLISS. Yes, sir.

By Mr. BLISS:

Q. If I may be allowed, when an order for an increase of service or increased pay or expedition is received from the Second Assistant, from that do you make up your certificate of the amount allowed which you transmit to the Second Assistant?—**A.** Certainly; the contract and the order. The order is received as a voucher just the same as the contract was. The contract was issued, and those orders grow out of the abstract, and payment is made under the order just the same as it was under the original contract. It is an increase of the contract price.

By Mr. TOTTEN:

Q. You said that was an abstract?—**A.** Yes, sir.

Q. Abstract of what, the journal?—**A.** Of the orders issued by the Postmaster-General.

Q. Abstract of the Postmaster-General's journal?—**A.** Taken from the journal, as I understand it.

By Mr. MERRICK:

Q. What is taken from the journal?—**A.** The abstract that is received is an abstract of orders issued by the Postmaster-General. But the abstract that reaches the auditor's office is signed by the Second Assistant.

Q. How do you know?—**A.** Because I can produce them.

Q. I know, signed in that way, but how do you know that it is an abstract from the journal of the Second Assistant-Postmaster General?—**A.** It purports to be an abstract from the official journal.

Q. Does it purport to be—**A.** [Interrupting.] An abstract of the orders of the Postmaster-General; yes, sir. That is what it says in the heading. I can produce it and show you how it reads—an abstract of the orders of the Postmaster-General. I believe it to read that way; but this abstract in every case is signed by the Second Assistant Postmaster-General.

By Mr. KER:

Q. Do you compare the certificate that you get from the Second Assistant with the journal?

Mr. TOTTEN. Wait a moment. I think we had better have that before us.

Mr. DICKSON. [The foreman.] I would like to ask the witness a question.

Mr. MERRICK. This witness is only familiar with matters in the auditor's office, is not that so?

The WITNESS. That is my business.

Mr. MERRICK. That is what you are familiar with.

The WITNESS. I have to know a great many things in order to be

familiar with the business in the Post-Office Department. That is my business.

By Mr. HINE:

Q. Have you, within the last three years, seen Miner and Rerdell there together on any contract, or route, or routes?—A. Certainly; I have seen them in the office.

Q. Both of them representing the same routes?—A. I cannot say that.

Q. Have you seen them at any time within the last two and a half years speaking together?—A. I cannot say that.

Q. They happened to be in the office at the same time. That is all you know about that, I suppose?—A. That is all I know.

Mr. MERRICK. He said he saw them there. He does not know how they got there.

The WITNESS. I think I saw them in the office at the same time?

By Mr. HINE:

Q. You never saw them speaking together?—A. I cannot say; I do not remember.

By Mr. DICKSON. [The Foreman:]

Q. You say in your testimony, the method adopted by which you audited the accounts of the subcontractors was that the subcontractors filed a bond or surety for the performance of work entered on by them?—A. That is something I have not anything to do with. I presume they bond to the contractor.

Q. Do they to the department?—A. The law provides that they shall have a lien upon the pay of the contractor when they file that contract bond; but in the auditor's office we keep no account with the subcontractor other than to pay him under the subcontract.

Q. What surety have you for the performance of that work?—A. We hold the contractor.

Q. On the original contract?—A. Yes, sir; and we pay the subcontractor on his subcontract, and charge it to the contractor. The warrant that goes out to pay the subcontractor is charged to the contractor.

Q. So that if there is any failure the original contractor is held?—A. The original contractor is held under his bond for all failures. Still the subcontractor is subject for fines and deductions, and when any failures occur during the quarter they are reported from the inspection office, and taken out of the subcontractor's pay.

By Mr. BLISS:

Q. Then the contractor is concerned with fines and deductions only in case of fines and deductions in that quarter amounting to more than the aggregate pay of the subcontractor for that quarter?—A. That is it.

Q. And then the cost would be taken out of the contractor; that is the fact, is it?—A. For instance, if the subcontractor gets \$1,000 and the contractor \$2,000, and the deduction is \$1,200, you see that there is nothing to go to the subcontractor then. The deduction is against the contractor. We charge the \$1,200 against the contractor instead of the subcontractor. We charge the contractor with the deduction, and ignore the sub., because there is nothing coming to him.

By Mr. MERRICK:

Q. And pay the contractor \$800?—A. Yes, sir.

By the COURT:

Q. The effect of it is to wipe out the subcontractor altogether?—A. Yes, sir.

By Mr. HINE:

Q. Very likely you would not do that unless the subcontract provided for it, would you?—A. The subcontract is filed subject to fines and deductions.

Q. If the subcontract itself were filed in that way, then you would make the deduction?—A. Certainly.

Q. So that you settle precisely according to the contract that the subcontractor files?—A. Yes, sir. If you will allow me, the deductions for failures are based upon the contractor's pay instead of the subcontractor's pay. So that if the contractor is getting \$2,000 and the subcontractor \$1,000, if he fails one trip he is charged for the price of two, because it is based on the contractor's pay.

By Mr. WILSON:

Q. Are these subcontracts filed from all over the country?—A. Yes, sir.

Q. It is a very common thing, is it not?—A. Yes, sir.

Q. And it is a common thing for a subcontractor to take the service at less than the contractor gets, is it? There is nothing unusual about that?

Mr. MERRICK. I object to that, your honor.

The COURT. That is not a question about the course of the office.

Mr. MERRICK. Not a bit of it.

Mr. TOTTEN. It looks very much like the course of business in that office. The subcontractor can do nothing with the contractor, except by the authority of the Postmaster-General.

The COURT. The act of Congress allows them to file a subcontract, and the subcontract filed is in order to secure his money. Of course the act of Congress does not prescribe the terms of the subcontract.

Mr. TOTTEN. Oh, no, but it requires that there shall be no subcontract without the privilege of the Postmaster-General.

Mr. MERRICK. There is a general permission to sublet at any time the contractor likes.

Mr. WILSON. The point of my question was different from all that. There has been so much said about some of these subcontractors getting less than the contractor that I want to show that that is a common thing all over the United States; that there is nothing unusual about it, and nothing to attract the attention of any public officer in regard to it. Just simply by showing that there are thousands of such cases in the United States.

The COURT. That is a part of your defense.

Mr. MERRICK. I think my brother is as much mistaken about that as he was about some facts in his opening. The hour of adjournment has arrived, your honor.

The COURT. To-morrow will be Saturday. I think the course of the court is to adjourn over Saturdays.

Mr. MERRICK. We have the good-old habit of slave times.

The COURT. Adjourn the court until Monday morning.

Thereupon (at 3 o'clock and 28 minutes p. m.) the court was adjourned until Monday morning at 10 o'clock.

MONDAY, JUNE 12, 1882.

The court met at 10 o'clock and 5 minutes a. m.
Present, counsel for the Government and defendants.

AMOS M. WILSON recalled.

By Mr. KER :

Question. At what period did you take charge of the journal office ?—Answer. July 9, 1869.

Q. How long did you remain in charge of it ?—A. Until July 7

Q. Who took charge of it after you gave it up ?—A. Mr. C. W. Gan.

Q. The journal you had charge of was the one in which was e all orders affecting the transportation of mail, increase of serv duction of trips, and so on, was it not ?—A. Yes, sir.

Q. There are two journals, are there not ?—A. Yes, sir.

Q. And you had charge of one ?—A. Yes, sir.

Q. How was this journal signed ; did you take it to the Post General, or did he come to your room to sign it ?—A. I took it room.

Q. How often did you take it to his room ?—A. I think on an a about once in two weeks.

Q. Did he sign it in your presence ?

Mr. TOTTEN. If the court please, we shall object to that as bearing towards the destruction of the integrity of the Postmaster-General's record. When the Postmaster-General's record comes in court, it shows distinctly by the signatures of the Postmaster-General himself that he signed the proceedings every day. Now we of this kind of testimony at this place for the purpose of impeaching integrity of the record. It is a record of a public department.

The COURT. I do not think it impeaches it.

Mr. TOTTEN. I want to bring your honor's attention to the fact this is not proper testimony. We do not care much about it.

The COURT. Go on.

Q. Did he sign it in your presence ?—A. Usually ; not always

Q. While you were there did he read the journal ?—A. No, sir.

Q. When you took the journal to him to sign, did he read it ?
A. Generally, not.

Mr. TOTTEN. If your honor please, that is an effort to impeach the record.

Q. Was it signed at the bottom of each day, or was it signed
—A. Each day.

Mr. TOTTEN. If there is anything wrong about it there is a way to get at it than this.

The COURT. The record is not in evidence yet. This is merely money to show the course of business in that office.

Mr. TOTTEN. Very well ; let him do it.

The COURT. He is doing it.

Mr. TOTTEN. He is impeaching the integrity of that record.

The COURT. I do not know it. It is not before the court.

Q. During the entire time that you had charge of the journal there ever any order revoked or correction made in the journal in fact of the Postmaster-General signing it ? That is, at the time he signed the journal, was there any order revoked or changed, change made in the journal ?—A. Clerical errors of the journal were corrected by an order of the Postmaster-General.

Q. Was there any revocation of an order for increase or allowance of money?—A. Yes, sir.

Mr. TOTTEN. Your honor, the book will show that itself if there was.

The COURT. That does seem to be going a little beyond the proper limit.

Mr. TOTTEN. Your honor, we will have to see that book.

The COURT. You will probably see it; I do not know. I do not see the bearing of it just now.

Mr. MERRICK. That question is withdrawn.

Mr. KEB. Yes; we do not insist on it.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. I understand you to say that you took charge of that particular desk in 1869?—A. Yes, sir.

Q. And continued there until 1880?—A. Yes, sir.

Q. The course of business has been the same all the time, since you have occupied that desk, has it?—A. I think it has. I do not remember any change.

Q. You don't know of any change, do you?—A. No, sir.

Q. Let us see about this course of business; orders are made with reference to the carrying of the mail. All orders that affect the question of the pay for carrying the mail come to you to be entered upon this particular journal of which you are speaking. Am I correct?—A. You are.

Q. All general orders affecting the department go to another clerk and are recorded by him?—A. Yes, sir.

Q. And do not go upon this particular journal that you have charge of?—A. Yes, sir.

Q. Mr. Thomas S. Taylor is the keeper of that other journal, is he?—A. At present; yes, sir.

Q. Now, when these orders come to you, you simply record them in that book?—A. Yes, sir.

Q. And then from time to time you carry that book to the Postmaster-General for his signature?—A. Yes, sir.

Q. And the Postmaster-General signs the orders of each day?—A. Yes, sir.

Q. Separately and distinct from each other day?—A. Yes, sir.

Q. Do you carry that book first to the Second Assistant, and then to the Postmaster-General, or do you take it directly to the Postmaster-General?—A. Directly to the Postmaster-General.

Q. And if it is convenient for him to sign it then he signs it then, and if it is not convenient he signs it as soon as it is convenient?—A. Yes, sir.

Q. How frequently do you carry it to him?—A. Well, about once in two weeks.

Q. Is it not the practice to take it to him at the end of every week in order that he may sign his name to the week's work; is not that the rule?—A. I do not know of any such rule.

Q. Is it not the practice to take it to him less frequently when he is away from the city?—A. Certainly, when he is away it is taken to him less frequently.

Q. When he is away, and you know he is not there, you do not take it?—A. No, sir.

Q. And when he is there you take it to him pretty regularly, do you not?—A. Pretty regularly.

Q. Then, as I understand you, that has been the practice ever since you have known anything about this office?—A. Yes, sir.

Q. Now, at the end of each week, what do you do about these orders that have been made affecting the pay?—A. They are certified to the auditor.

Q. Do you make up an abstract?—A. Yes, sir.

Q. Of all orders that have been made affecting the service during the week?—A. All that originate or affect a claim.

Q. And you send that to the Sixth Auditor of the Treasury, as he is commonly called?—A. I do not send it myself. I take it to the Second Assistant for his signature. I presume he forwards it.

Q. You carry it to the Second Assistant for his signature?—A. Yes, sir.

Q. I wish you would state the extent of that business that is going on there.

The COURT. Allow me to ask a question just here.

Mr. WILSON. Certainly.

By the COURT:

Q. Are these certificates sent from the Second Assistant Postmaster-General to the auditor before the Postmaster-General himself has signed the records?—A. Often they are.

The COURT. Now, go on Mr. Wilson.

By Mr. WILSON:

Q. And those certificates are on the auditor's books for months before any pay is collected by reason of them, are they not?—A. Well, I do not know.

Q. Payments are made quarterly, are they not?—A. Yes, sir.

Q. Do you know that the same thing goes to the Third Assistant?—A. Yes, sir; I think the same; with the exception of orders relating to mail messenger service and the supply of special offices.

Q. As to all these matters the practice has been precisely the same; no change in it since you first entered into that office in 1869 or '70?—

A. Well, in regard to that report to the Third Assistant Postmaster-General—

Q. [Interposing.] Leave that out. I do not care about that. As to the balance there has been no change; it has been the same?—A. No change.

Q. And the practice was the same under the administration of General Brady that it had been under prior Postmasters-General?—A. Yes, sir; during the time I was there.

Q. And it is the same now?—A. So I understand. I am not on that desk now.

Mr. HINE. If the court please, I would like to introduce General Henkle, who will hereafter see that no harm comes to Mr. Miner. It is necessary, of course, that we should have a lawyer from Ohio in this case, and the general appears from that State.

The COURT. As there are no other Ohio lawyers, we will be glad to have him.

Mr. TOTTEN. Your honor, I left Ohio so long ago that you must not charge me to that State.

Mr. WILSON. I left there a great many years ago. Don't throw that up to me.

CHARLES W. MORGAN sworn and examined.

By Mr. KER:

Question. Are you employed in the Post-Office Department?—Answer. Yes, sir.

Q. You have charge of the journal in that department?—A. I have.

Q. Which journal do you have charge of—the one that relates to the transportation of mails?—A. Yes, sir.

Q. Whom did you succeed?—A. Amos Wilson.

Q. When did you take charge of the journal?—A. July 7, 1880.

Q. Have you charge of it yet?—A. Yes, sir.

Q. During the time that you had charge of the journal how often did you take it to the Postmaster-General for signature?—A. Sometimes once a week, and sometimes twice a week.

Q. You took it yourself, did you?—A. As a general thing.

Q. Did you see the Postmaster-General sign it?—A. Frequently.

Q. Did he read it before signing it?—A. Not as a general thing.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. You took it to him sometimes once a week, and sometimes twice a week?—A. Yes, sir.

Q. And that is since July 7, 1880?—A. Yes, sir.

Mr. WILSON. That is all.

HANNIBAL D. NORTON sworn and examined.

By Mr. KER:

Question. Are you employed in the Post-Office Department?—Answer. I am.

Q. How long have you been employed there?—A. Since September 30, 1875.

Q. In what branch of the Post-Office Department are you employed—the pay division?—A. At present I am chief of the finance division of the Third Assistant Postmaster-General's Office.

Q. I want you to describe to the court and jury how you issue warrants in payment for carrying the mails; how you come to issue them, and to whom you issue them. Describe the business in your office.—A. We issue warrants on the report, so called, of the Auditor of the Treasury for the Post-Office Department. That report is a statement of account. It gives the number of the route, the amount of pay per quarter, and the deductions, if there are any, and the balance due to the payee. We issue a warrant to the payee named on this report, and for the amount named.

Q. Then you draw the warrant in favor of whoever is certified to you from the auditor?—A. Yes, sir. They are all warrants at present. Previously we issued drafts upon postmasters at so-called depositories and draft-offices. That was abolished on September 1st, last. The first of October we commenced issuing warrants only. The warrants are so called to distinguish them from the drafts of the Treasury. They become virtually drafts of the Treasury after they are signed by the Treasurer or Assistant Treasurer of the United States, but they are called post-office warrants.

Q. Who are the drafts or warrants signed by—the Postmaster-General or the Third Assistant?—A. They are now signed by the Third Assistant Postmaster-General.

Q. With the name of the Postmaster-General, or with his own name ?
—A. His own name ; A. D. Hazen.

Q. How were they signed in 1879 ?—A. In 1879 by the Postmaster-General, or the acting Postmaster-General.

Q. How long has it been the practice to sign them with the Third Assistant's name ?—A. Since the 1st of March last, an act of Congress permitted the Postmaster-General to authorize the Third Assistant to sign those warrants.

Q. Do you know Mr. Rerdell ?—A. I do.

Q. Do you see him in court, or have you seen him here during the trial ?—A. [After looking around the room.] I cannot see him just now.

Q. Do you know John R. Miner ?—A. I do.

Q. Has Mr. Rerdell been in your office ?—A. A great many times.

Q. About which of these routes did he appear ?—A. I could not tell you the numbers.

Q. I do not want the numbers ; give us the names ?—A. He came in occasionally——

Mr. TOTTEN. [Interposing.] If the court please, I supposed we were finding out the course of business in the Post-Office Department. Is Rerdell's coming in or going out——

The COURT. [Interposing.] I suppose we are leaving that point perhaps.

Mr. TOTTEN. Then we want to know something more about this unlawful combination.

The COURT. I presume this is to let you have some light upon the point.

Mr. TOTTEN. We want to know how the light is coming in.. We these gentlemen have begun the proof of the unlawful conspiracy want to know something about it.

The COURT. I judge by the question that he proposes by this with to bring two of the defendants together in regard to these matters

Mr. MERRICK. Counsel will have light enough. He will see it as we come to it.

Mr. TOTTEN. I think your honor it is not time for us to have an testimony of this kind just yet. Your honor will remember that the three divisions of this combination. One division relates to the I

contracts, the other relates to the Miner contracts, and the other

Now, before these eight or seven men can be co

—ing a combination in violation of

Mr. TOTTEN. These averments that precede the assertion that there was an unlawful combination. The averment is that on or about the 24th of May these nineteen contracts were mixed up as one, that they were all mutually interested in each other's contracts. That was a preliminary averment, and it was a necessary one, as your honor has decided. They could not go on with such an indictment as this without that averment. Now, I say they cannot go into the proof unless they show that there was such a consolidation of those interests, such a mutual interchange of pecuniary interests as they have averred.

The COURT. That has to be made out by separate facts, I suppose, and this witness is to prove perhaps one of those facts.

Mr. TOTTEN. If he is going into that proof it is all right.

The COURT. It is a question which may bring together Rerdell and Miner. Rerdell is a defendant and Miner is a defendant. The combination is to be proved by circumstances.

Mr. TOTTEN. Certainly ; just like any other fact.

The COURT. [To Mr. Ker.] You can ask the question.

Q. You say that you have seen Mr. Rerdell in your office?—A. I have.

Q. About which of these contracts did he appear?—A. He came in to make inquiry when such a one would be issued for such a person.

Q. What person?—A. I am not positive, but I think John W. Dorsey was one of those he inquired about ; and [after a pause] Peck, I think, it is so long ago I have——[sentence uncompleted.]

Q. About whose contracts did Mr. Miner appear?—A. For his own and for Mr. Vaile.

Q. Have you seen John W. Dorsey in the office at all?—A. I don't remember that I ever saw him. If I did I did not know him.

Q. Have you seen Mr. Peck in the office?—A. No, sir ; not to my knowledge.

Q. You have stated about drawing the warrants. To whom were the warrants delivered ; to the persons in whose name they were drawn, or how were they arranged ?

Mr. HINE. As General Henkle is unable to-day to take very much part in the proceedings, I have undertaken in his behalf to represent Mr. Miner as well as Mr. Vaile. I object to this question. The prosecuting attorney should not put a suggestive question. Let him ask a general question and let the witness give his information in reference to it ; not tell the witness substantially what the answer is.

The COURT. As to this particular question wherein do you object ?

Mr. HINE. If the question is read your honor will see in a moment how suggestive it is. I will not argue the matter, but simply submit it to your honor.

The REPORTER. [Reading.] You have stated about drawing the warrants. To whom were the warrants delivered ; to the persons in whose names the warrants were drawn, or how were they arranged ?

The COURT. I think that is not suggestive.

A. The majority of them were mailed to the payees.

Q. Sent out by mail?—A. Yes, sir.

Q. Did anything accompany them ; a receipt, or anything of that kind?—A. A printed letter of transmittal with the number of the warrant filled in, and on the bottom of that sheet a receipt for such warrant by number. That receipt was sent back to us in the majority of cases by the payee, signed, to show that he had received it.

Q. As I understand it, you inclosed the warrant with this blank receipt?—A. Yes, sir.

Q. And the receipt was returned ?—A. Yes, sir.

Q. Were there any deliveries in the office to the people that the warrants were drawn in favor of ?—A. A certain number each quarter.

Q. How did they acknowledge receipt for those warrants ?—A. The parties receipted for them in my office, on a desk I have for the purpose.

Q. Do you remember how Mr. Peck's warrants were delivered ?—A. I think they were all mailed, and the receipt came back to us through the mail.

Q. In relation to these particular routes of Dorsey and Miner and Peck, did you have any directions from the persons as to what to do with the warrants ?—A. Very seldom—only occasionally ; when I would get a letter or telegram to mail the warrant to a different place than that named on the auditor's report, or to deliver it to the person named in the letter from him. As for instance, he would say—I won't say that that is the case, but as an example, we will say that Mr. Dorsey wrote a note to deliver a warrant to Mr. Rerdell. Take that as an example. Mr. Rerdell would take the warrant and the receipt and return the receipt signed by Mr. Dorsey.

Q. Where did you send the warrants that were intended for Mr. Rerdell ; in what direction ; to what place ?

The WITNESS. Warrants intended for Mr. Rerdell ?

Mr. KER. Yes.

The WITNESS. He was not a contractor.

Q. Did you not send any warrants to him ?—A. There were occasionally some sent to him, in his care.

Q. Where did you send them ?—A. I think they were mostly mailed to Washington, D. C.

Q. Do you remember the place ?—A. I do not ; I think simply to Washington, D. C.

Q. Did you have verbal or written directions from Mr. Rerdell when to send them ?—A. No ; those were given to the auditor, and were placed upon the report from the auditor. The addresses are always given on the reports of the auditor.

Q. Did Mr. Rerdell, at any time, attend to any of Miner's routes, to Mr. Vaile's ?—A. No, sir ; not to my knowledge.

Q. Who gave out the warrants ; yourself, or a clerk ?—A. A clerk called the mailing clerk.

Q. But it was under your supervision ?—A. Yes, sir ; in my room.

Q. What was the name of this gentleman who gave out the warrants ?—A. The one who attended to the business regularly was Chas. H. Laird ; that is, for the last four years.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. You belong to the Third Assistant's office, I believe ?—A. Third Assistant's bureau, so-called ; yes, sir.

Q. Now, with reference to the mode of doing business, so far as relates to these matters that we are now inquiring about, from whom do you get, in the Third Assistant's office, your data with reference to these contracts, and the pay of the contractors ; how does it come to you ?—A. In the first place we get the contract—the original contract.

Q. How do you get that ?—A. It is loaned to us by the clerk in

A. No, sir; of the Second Assistant Postmaster-General's office; they are on file in his office—Mr. Gumbly at present.

Q. So that orders having been made, or these changes having been made—A. [Interrupting.] Those are the original contracts, sir.

Q. So that these original contracts having been made, you get them on your books through the Second Assistant's office?—A. We simply go down and get them when they have got through with them, and then put them on our books to enable us to examine the auditor's accounts, that there may be no error in passing the same.

Q. I was not asking you the purpose you had in view, but the facts; that they not only have the contracts in the Second Assistant's office, but that they have them also in the Third Assistant's office; that is to say, you have not the contracts themselves, but a record of them on the books?—A. We have a record; yes, sir.

Q. Now, when changes are made in the matter of these contracts, does that come to you also?—A. Yes, sir.

Q. You have them all?—A. Yes, sir; to examine the accounts to see if they are right.

Q. Exactly. So that whatever they have in the Second Assistant's office in relation to these matters comes also to the Third Assistant?—

A. We get a transcript the same as the auditor does.

Q. Then they have the same thing in the auditor's office?—A. We get the same thing, sir, made in duplicate.

Q. Do you know anything about their having the same thing in the Postmaster-General's office on his journal?—A. I so understand it.

Q. So that these things exist in this department in four different places?—A. They do.

Q. All having precisely the same information?—A. I say that because I have a general knowledge of the subject.

Q. Now, have you been employed there since 1875, as I understand it?—A. I have been chief of this division since the 16th of October, 1876.

Q. 1876, we will call it then. Do you know what the practice was before you became chief of this division; whether it was the same as it is now with reference to these matters you have been testifying about?

—A. It has been the same, as I am informed by my examiner, since 1869 in regard to orders, expeditions, and so forth.

Q. The same practice has prevailed up to this time in reference to these matters that you have been talking about?—A. From 1869.

Q. Now, how often are the contractors paid?—A. Every quarter.

Q. How soon after the close of the quarter, generally speaking, do you receive from the Sixth Auditor the accounts of the various contractors?—A. They commence within a week after the end of the quarter to come down slowly, and in about a month from the end of the quarter the business is very heavy, and continues for a month to be exceedingly heavy; we cannot keep up with it.

Q. About what time do you get all of a quarter in?

The WITNESS. Get them all made?

Mr. WILSON. Get all the warrants made up?

A. It generally runs nearly the entire quarter, but the majority of them are paid within about sixty days from the end of the quarter, as per the contract.

Q. Now, the auditor makes a report to you, does he?—A. That is what it is called; it is a statement of account.

Q. He states the account; in stating that account he gives you the pay as per contract, does he?—A. Yes, sir.

Q. You are enabled to verify that by your record ?—A. Yes, sir.

Q. Then, if there have been fines imposed on the contractor, or deductions made from his pay, that is stated also in this auditor's report ?—A. Yes, sir.

Q. And that you deduct from the amount of his pay, and issue warrant for the balance ?—A. That is already done on this statement of account or report ; we keep no account of fines and deductions.

Q. No ; but they are reported to you ?—A. Reported on this report.

Q. And you simply pay the difference between the fines and the deductions and the pay ?—A. Yes, sir.

Q. Now, when the auditor sends the report to you, he places on the report the address of the party to whom the warrant goes ?—A. Yes, sir.

Q. And you simply mail that warrant to that address ?—A. We do.

Q. Unless you get written instructions from the party entitled to deliver it to somebody else ?—A. Yes, sir ; or to the party in person if he calls, if I know him, or he is identified.

Q. If you know him, you hand it to him ?—A. Yes, sir.

Q. When you made out the warrants they were carried to the Postmaster-General, and he signed them ?—A. Yes, sir.

Q. The Postmaster-General signed the warrants up to March 1861 ?—A. He did.

Q. And since this act of March 6, or the recent act of Congress, these warrants are signed by the Third Assistant ?—A. They are.

Q. Are there a large number of these mail contractors ?—A. A great many, sir.

Q. Are there a large number of men who have a large number of contracts each ?—A. I cannot say that there are a large number having a large number of contracts ; there are quite a number.

Q. And there are some others not so large in number, who have quite a number of contracts. It is not unusual for one man to have quite a number of contracts—say two or three hundred ?—A. I cannot say how many. Possibly there are—

Mr. MERRICK. [Interposing.] Wait a moment. I submit that this is not proper.

Mr. WILSON. You will see if it is not when I ask the question.

The COURT. He has answered. He says it is a common thing for the same man to have a large number of contracts ; he does not know whether it is a common thing for him to have two or three hundred contracts.

By Mr. WILSON :

Q. It is a usual thing in the practice of the office for the contractors these men having a number of contracts—to have somebody here to look after the matter of their pay, fines, deductions, and all that ?

Mr. MERRICK. [To the witness.] Wait a moment until the court has made answer.

The COURT. This is cross-examination.

Mr. MERRICK. I know it is cross-examination. But it is in accordance to the usual custom of outside people, not to the custom of the office.

The COURT. I understand the question relates to the office.

Mr. MERRICK. No, sir ; the question is this : whether it is usual for contractors to have attorneys and agents employed in the city. Not as to what the custom of the department may be but as to what the custom of the contractors may be.

The COURT. I would not admit an inquiry of that kind in chief. In cross-examination I think I will allow it.

Mr. TOTTEN. They asked about Rerdell. That is not the custom of the department.

Mr. MERRICK. That was a question of proof.

The COURT. Rerdell is a defendant in this case, and the object of that inquiry was to connect him with one of the contractors.

Mr. MERRICK. We made no inquiry about the custom of parties outside.

The COURT. On cross-examination the latitude of inquiry is pretty much within the discretion of the court.

By Mr. WILSON:

Q. Is it or not a usual thing for these contractors to have their agents or attorneys to look after the matter of their accounts in the department?—A. A number of them have such attorneys or agents.

Q. And these attorneys or agents come there for the purpose of ascertaining the status of the accounts, and expediting the issuance of the warrants?—A. They do.

Q. There was nothing unusual about that, was there?—A. Nothing unusual.

Q. How long has that practice prevailed so far as you know?—A. Ever since I have been there, and for a long time before, I expect.

Q. And still continues, does it not?—A. It does.

Q. So that if Mr. Rerdell came there and inquired about Mr. Dorsey's contract; or Mr. Miner came there inquiring about his own, or about Mr. Vaile's, there was nothing unusual about that transaction, was there?—A. It was not so considered.

Q. Going back to 1875, where was the Sixth Auditor located; I do not mean the room he sat in, but where the clerical work, or the business of the office was done; where was that located?

The WITNESS. Going back how far?

Mr. WILSON. To 1875.

The WITNESS. You mean the statements of the accounts for payment to mail contractors?

Mr. WILSON. I want to get at the rooms they occupied?

A. They occupied the series of rooms on what is called the Eighth-street corridor of D floor; that is, the upper floor.

Q. How were they arranged with reference to the rooms occupied by the Second and Third Assistants?—A. The rooms of, you might say, the corresponding division of the Third Assistant and the Second Assistant are immediately below that—on the floor below.

Q. I wish you to state whether or not it was the practice in these divisions, during the years that you have been there, for the parties in charge to be communicating with each other, examining each other's books, and so forth, and so forth, for the purpose of conducting properly this business; whether there was free access and communication between you?—A. There is, for this reason—if you wish me to explain.

Mr. TOTTEN. Go on.

Mr. WILSON. You may proceed.

A. [Continuing.] In 1869 it was found that the Sixth Auditor's clerks were not infallible, and that occasionally an error might creep into the report as to the additions, extensions, and the calculations, and an examiner's desk was established in the Third Assistant Postmaster-General's Office, the division of finance, and since that time he examines all these reports, the additions, extensions, the pay, calculations of pay, &c. If he finds what he calls an error, or supposes an error, he goes to the clerk who states the account up stairs,

or to the chief of his division, and points it out to him. If it is an error it is corrected. If he is wrong, he comes back and passes the report. On that the warrant clerk—or in past times the warrant and draft clerk—would draw the warrants and drafts.

Q. Is there communication between the Sixth Auditor's Office and the Second Assistant's Office also, with reference to the adjustment and keeping straight of these accounts?—A. I cannot tell you sir; that is outside of my bailiwick.

Q. I will ask you to state whether all calculations that are made in the Second Assistant's Office with reference to increase, decrease, and so forth of service and trips, and so on, are revised in the Third Assistant's Office before they go into effect?—A. My examiner goes over the whole of them to see if there are any errors. That is part of his business.

Q. Before the payments are made they are all revised. Now, I will suppose a case. Suppose that there is taken off of the end of a route twelve miles. That involves, I believe, under the practice of the department, paying to the contractor a month's extra pay with that reduction of the length of the route?—A. Correct, sir.

Q. The calculation of that reduction is first made in the Second Assistant's office, is it?—A. Yes; so I am informed.

Q. Then that calculation is reviewed by the examiner in the Third Assistant's office before anything is done with it?—A. Yes, sir; and also in the auditor's office, I am informed.

Q. Now, suppose that you add twelve miles to the length of the route, which involves that addition to the pay, as I understand it?—A. Pro rata, I think are the words.

Q. Yes, pro rata. Now, the calculation is made in the first instance in the Second Assistant's office?—A. So I am informed.

Q. Then it goes to the Third Assistant's office, and is there revised?—A. In the form of this report which has been spoken of; that is to say, an abstract of the orders of the Postmaster-General.

Q. These calculations then go through three hands before they become effective in the office?—A. They do.

Q. Now, suppose there is an expedition of service; does the same thing occur with reference to that—the amount that is to be paid to the contractor for expedition?—A. It goes through the same routine.

By Mr. HINE:

Q. You have referred to Mr. Rerdell and Mr. Miner being in your room. Will you kindly advise the court and the jury whether Mr. Miner and Mr. Rerdell have been on speaking terms within more than three years?—A. Seemingly not, sir.

Q. You have already stated, as I recollect, that they were not there on the same routes?—A. No, sir; I say "seemingly not," for the reason that I think it was on one or two occasions there was a warrant payable to Mr. Rerdell, I think, as attorney or assignee; and it was to the care of Mr. Miner. Mr. Miner handed it back, and said he wished me to hand it to Mr. Rerdell in person; that he preferred that I would do so.

Q. Have Mr. Rerdell and Mr. Miner been on speaking terms, so far as your observation has gone, within the last three years and a half?

Mr. MERRICK. [Interposing.] State what you know.

A. I do not know. When they met in my office, or passed each other, they did not speak for a year or two past. I know that much. I do not know what the cause was.

By Mr. DICKSON [the foreman]:

Q. Allow me a question. Are all settlements for mail service made through your department?

The WITNESS. The payment of mail service?

Mr. DICKSON. Yes, sir.

A. Yes, sir; we pay all warrants now.

Q. You referred to Mr. Rerdell representing the interests of J. W. Dorsey and Mr. Peck?—A. I said I thought so. I was not positive. I think he was the agent or attorney of Mr. Dorsey, and I have a faint remembrance that he might have been for Mr. Peck; but I would not swear to it; I would not say positively.

Q. Was he acting under the authority of a power of attorney?—A. That I cannot say, for those powers of attorney are filed in the auditor's office, and if the report said, "Pay to John W. Dorsey, such a place, care M. C. Rerdell, Washington," I would mail the warrant to that address—"J. W. Dorsey, care M. C. Rerdell, Washington." Then a receipt for it would come back signed by Mr. Dorsey, because the receipt would have to be signed by the payee, that is the rule; if it was not, we returned it for proper signature.

Q. Then, when you delivered a warrant due J. W. Dorsey to Mr. Rerdell, it was on an order of J. W. Dorsey to that effect?—A. No, sir; we delivered it in a sealed envelope addressed to the party just as it was put in a mail-bag.

Q. What I am trying to reach is, what authority had Rerdell to represent J. W. Dorsey, or to represent Mr. Peck; did he have the authority of a power of attorney, or did he have a direct order from either of those gentlemen?—A. I say if he had a power of attorney I was not aware of it; it was on file in the auditor's office. If he said over his signature to the auditor that we deliver it to Mr. Rerdell, or to his care, we delivered it.

Q. Then such an order must be on file in the Sixth Auditor's office?—A. I presume so.

REDIRECT EXAMINATION.

By Mr. KER:

Q. I want to ask one question to clear up some doubt. If the Second Assistant Postmaster-General makes an order for increase or reduction, or any other cause, is the amount changed in your office or are you guided exclusively by what comes from the auditor's office?—A. We get the same data that the auditor does and put it on our books.

Q. It comes through your office also?—A. Yes, sir; it is made in duplicate. I have got under my arm copies of the orders of the Postmaster-General; the orders are made in duplicate.

Q. In case the Second Assistant should make an order directing an allowance for \$10,000 for expedition, for reduction, or for any other cause, is that amount changed in your office?—A. No, sir; if it is the order of the Postmaster-General that there be that extension, if it is according to law, we pass it.

Mr. MERRICK. We are not asking about the law; we are asking about the facts.

The WITNESS. Please put your question in another form, or state it again, and I will give you another answer.

By Mr. MERRICK:

Q. You were asked whether if you were directed to pay \$10,000 under

order that came to your office, you would pay.

—A. We would not change it.

By Mr. INGERSOLL:

Q. Had you the right, then, to make a calculation to see whether the amount you were ordered to pay was the correct amount?—A. We certainly did—the examiner did.

Q. Were you furnished the data with which to make that calculation?—A. Certainly.

Q. Now, then, if the data did not sustain the calculation, would you pay it?—A. We would just hold it up until we had made an examination in the auditor's office, and in the Second Assistant's, to see if it was right.

By Mr. TOTTEN:

Q. If it turned out to be wrong you would have it corrected; you would not make any drafts?—A. No, sir.

Mr. BLISS. I would like to ask a single question, your honor.

Q. [By Mr. BLISS.] I simply desire to ask if there comes to you an order of the Second Assistant Postmaster-General, or the Postmaster-General, directing that there should be allowed, in a case of expedition, a certain sum, whether you, by any calculation or anything else, varied that sum?—A. We do not, until it is examined in the Third Assistant's office, to see if it is correct. If it seems to be incorrect——

Q. [Interposing.] But if the Postmaster-General or the Second Assistant had made an order that there should be allowed to a contractor \$10,500, in consequence of expedited service, would you in any way, by calculation or otherwise, change that sum?—A. We would not change it; we would see if it was right.

Q. How could you tell it was right, when he exercised discretionary power as to how much he should allow?

Mr. INGERSOLL. They are cross-examining their own witness.

Mr. MERRICK. We merely wish to get at the truth, which the other side do not want to get out, but rather to leave it in confusion.

The COURT. I understand the business. But let him explain himself.

The WITNESS. In the first place I take it that Colonel Bliss wants me to say if the Postmaster-General sent an order to us to pay \$10,000 for expedition, whether we would pay it or not. Is that the point?

Mr. BLISS. That if the Postmaster-General had made an order that the service on a given route should be expedited, and that in consideration of that increased speed there should be allowed to the contractor a specified sum, as \$10,500, whether you do anything more than ascertain that the Postmaster-General or the Second Assistant has made such an order?

A. We ascertain whether it is correct in accordance with the price the pay for extension is. If it is, we pass the order.

Q. Did you revise the discretion of the Second Assistant in fixing the order?—A. We do this. We have a second audit of the account. He wants to be sure before he passes the warrant that it passes the highest of his own clerks before he signs it.

The COURT. I think I get your idea.

By Mr. BLISS:

Postmaster-General says that there are allowed less than pro rata. By what standard do

Q. Therefore you revise to the extent of seeing whether that is the limit authorized by law?—A. Yes, sir.

Q. If it is within the limit you do not pass upon the question of how much it is within the limit, or should be?—A. If it is within the limit we pass it. If it is not enough the examiner finds out why it is.

Q. How can you tell when it is not enough, when the Second Assistant, or the Postmaster-General, has made an order that a certain sum be allowed, being less than pro rata?—A. If he so states, that settles it.

Q. Then if he makes an order allowing a pro rata, either for expedition or increase, you see that it is pro rata?—A. Exactly.

Q. If you find it to be under an order which allows more than pro rata, then you do not pass it?—A. We want to see why it is made, sir.

Q. And the same way with the other allowances you speak of?—A. Yes, sir.

By Mr. INGERSOLL:

Q. Let me ask you a question. When it comes to you to add so many thousand dollars for expedition, there is some basis given you at the same time for this expedition, is there not?—A. Yes, sir.

Q. You know the number of miles it is to be expedited; that is, how much the time is to be shortened?—A. Yes, sir.

Q. You also know the then present pay, do you not?—A. We do.

Q. Do you then have the same data to make the calculation that the Second Assistant was supposed to have before him when he made it?—

A. We are supposed to have the same, because it is on this order that states it.

Q. You go over his figures?—A. We do.

Q. And if you find them right, as he says, you pass it?—A. We do.

Q. If you find them wrong as he says, you do not pass it?—A. If it is incorrect we find it out.

By Mr. WILSON:

Q. The Postmaster-General has a group of clerks of his own, does he not?

The COURT. Oh, well, this witness has been interrogated by two or three counsel on each side, and I think we have enough.

Mr. INGERSOLL. Yes; that is so. He is a good, intelligent witness, and I hope they will give us more just like him.

THOMAS L. TULLOCK was called but did not respond.

Mr. KER. I now offer in evidence a certified copy of a letter of the Postmaster-General to the House of Representatives asking for an appropriation for inland mail transportation for the present fiscal year, 1879, and that the sum of \$2,000,000 be reappropriated out of the unexpended balances of former appropriations for that purpose. It is to cover a deficiency in the year 1879.

Mr. TOTTEN. Let us look at that a moment.

[The paper was here submitted to counsel for defendants for inspection. It is as follows:]

POST-OFFICE DEPARTMENT,
Washington, D. C., May 31, 1882.

I, Frank Hatton, Acting Postmaster-General of the United States of America, certify that the annexed letter is a true copy of the record in this department.

In testimony whereof I have hereunto set my hand, and caused the seal of the Post-Office Department to be affixed, at the city of Washington, the day and year above written.

[SEAL.]

FRANK HATTON,
Acting Postmaster-General.

POST-OFFICE DEPARTMENT,
Washington, D. C., December 8, 1879.

SPEAKER HOUSE OF REPRESENTATIVES:

SIR: I have the honor to transmit herewith a communication from the Second Assistant Postmaster-General calling attention to the insufficiency of the appropriation for inland mail transportation for the present fiscal year, asking that the sum of two million dollars be reappropriated out of the unexpended balances of former appropriations for that purpose, which have been covered into the Treasury, and be made available to meet the necessities of the service and of the country during the current fiscal year. I cordially indorse this recommendation, and take this occasion to suggest that the business interests of the country would be promoted by the prompt and favorable action of Congress.

(Signed)

D. M. KEY,
Postmaster-General.

CHARLES J. BREWER, recalled and examined as follows:

Mr. MERRICK. I had a note here just now, saying that you are unwell, and cannot stand very well. [To the court.] Will the court permit the witness to be seated?

The COURT. Certainly. Mr. Brewer was examined on Friday.

Mr. MERRICK. Yes, sir. He is now called for the purpose of identifying some records, in order that I may proceed to put them in proof, in regard to one of the routes—route 34149, Kearney to Kent.

Mr. WILSON. One minute.

By Mr. WILSON:

Q. Before Mr. Merrick begins with you, I want to ask you a question. You said that a lot of these papers had been out of their proper custody now for a year, as I understood you the other day?—A. Out from my files, sir.

Q. Do you know where they have been?—A. I know where they have been part of the time, because I have seen them.

Q. Where were they part of the time?—A. In the room on the floor below mine in the Post-Office Department. I suppose they have been there all the time, but I do not know.

Q. Who had charge of them?—A. Mr. Woodward.

Q. Have they been taken away from the files of the Post-Office Department?—A. They have been taken from the permanent files.

Q. And had been taken over to the Department of Justice, had they not?—A. Mr. Woodward is an inspector of the Post-Office Department.

Q. Had they not been turned over to the Department of Justice?—A. I cannot say as to that, sir.

Q. How long is it since these papers have been off your files?—A. Some of them nearly a year, and some of them less time. I do not know; but quite a year.

Q. Who is the custodian of those papers when they are in the proper files?—A. The corresponding clerks of the sections have charge of them in their rooms.

Q. They are the custodians of the papers in the room. Have they been in their custody since the time they were taken from those files?—A. Mine have not been in my custody.

Q. You have not had them?—A. No, sir.

Q. Who has had access to this room No. 22 down on that first floor?—A. I cannot tell you, sir.

Q. What is the number of that room?—A. I cannot tell you that. I wish to correct my testimony of Friday in two respects. I stated on Friday that the room was open after I left there. It is open also before I get there. But there are watchmen in the building, and the men who clean the rooms are in there at that time. Then I stated that the

papers had been in my custody up to the time they were taken away by Mr. Woodward. I believe that during the Congressional investigation these papers were sent to Congress to that committee. I could not identify which of them went there, but some of them must have gone there, because some of them appear in the printed records of that committee.

By Mr. MERRICK :

Q. Did you have charge of the papers relating to the contractors in regard to the route from Kearney to Kent, No. 34149?—A. I did not have charge of the contract. I had charge of the other papers.

Q. I speak of the papers relating to the contract. [Submitting a package of papers to the witness.] Will you look at those papers and see whether or not they are papers that were in your custody in the capacity in which you say you acted when you had charge of them?

—A. [While examining the papers and selecting some and submitting same to counsel.] I cannot swear to those three.

Mr. TOTTEN. Will you let us look at those papers, Mr. Merrick?

Mr. MERRICK. When the proper time comes I will, with pleasure?

The WITNESS. [While still examining the papers.] These papers are misplaced, somehow. [Submitting one to Mr. Merrick.] That one belongs in that jacket. [Indicating.] All the rest of them have been in my possession, sir.

Q. [Holding up some of the papers examined by the witness.] All of these have been in your possession?—A. Yes, sir.

Q. Are these the papers you delivered over to Mr. Woodward?—A. A part of them.

Mr. MERRICK. That is all for the present.

Mr. WILSON. Will you please let me see those papers, Mr. Merrick?

Mr. MERRICK. I have not offered them yet.

CROSS-EXAMINED.

By Mr. WILSON :

Q. There was a package of papers just handed to you by Mr. Merrick. You have been sorting them, I believe. Did you find papers in there that did not belong to these files?—A. I did not examine them, but I saw that I had no indorsement on them, so I supposed that—

Q. [Interposing.] Some papers that had no indorsement of yours on them. Do you recognize those as being papers you delivered to Mr. Woodward?—A. I do not; but I suppose they are, from the fact that one or two of them contain General Brady's indorsement.

Q. Have you any means by which you can know which of those three which Mr. Merrick now has in his hand, and which came out of that bundle, and he separated from the bundle, were in the papers when you sent them to Mr. Woodward?—A. No, sir; a call was made for a large number of papers.

Q. Wait a moment; I will come to that presently. Can you tell this jury and the court that all the papers that you delivered to Mr. Woodward are now in this bundle?—A. I cannot, of course.

Q. You put these papers up in a jacket as they come in and keep them in that jacket, do you not?—A. Some of them we do; letters we do. Papers which relate to a case on which action is taken are enclosed in a jacket.

Q. They are put in a jacket?—A. Yes, sir.

Q. I will ask you to state if it is not a fact that there might be a

great many papers in that jacket which you could not determine were in it from simply looking at the brief on the back of the jacket?—A. Certainly; that is the case.

Q. You do not pretend in the brief on the jacket to name every paper that is in the jacket?—A. No, sir.

Q. And therefore when these papers go out of your custody, and remain out of your custody for a year, and are handed back to you, you cannot tell whether the papers that are handed to you are the papers which you turned over to Mr. Woodward?—A. I can if they have my indorsement on them.

Q. You can only so far as they happen to have your indorsement on them; but if you did not put your indorsement on them you could not tell anything about that?—A. No, sir.

Q. Is it not a very common thing, Mr. Brewer, for papers to be in these jackets without any indorsement upon them, and without any special reference to them in the brief?—A. I do not think it is, sir. There are papers relating to the same subject, petitions from different places, that are very frequently folded together, and one indorsement made for the whole. If those papers should be separated at any time, the indorsement would not appear on this [indicating] that was on the inside.

Q. Now, suppose that there had been a half dozen petitions for increase of service on a particular route—I will say this particular route that you have been looking at—and that a half a dozen petitions were all folded up inside of one, and you had made your indorsement upon the outside of the outside petition. I will ask you to state if there is anything to prevent all of those inside petitions being removed and you have no evidence here before you now on that fact?—A. Well, generally, packages that are done up in a jacket are done up as closely as they possibly can be, and if there were five or six petitions removed it would show that.

Q. Suppose there was one removed—I will say one?—A. That could be done.

Q. And suppose another one had been stuck in there; that could be done, could it not?—A. I believe it could.

Q. And these papers having been out of your custody now for a year, you cannot tell whether that has been done in this case or not, can you?—A. No.

Q. Now, when these papers were turned over to Mr. Woodward, did you turn over simply one package of papers to him, or did you turn over a great number of them?—A. A great number. Sometimes a single route was sent for. But when the first call for these papers was made it covered a large number of routes.

Q. Did you take the receipts from him?—A. In most cases. I think in the first cases the papers that were called for were just handed to the assistant chief without a receipt. Those were papers relating principally to the oaths of contractors.

Q. Did you take any memorandum schedule of the papers that were in the respective packages that you turned over to him?—A. No, sir; I just said papers on such a route.

Q. So that, whether these packages are now as they were when you gave them to him, you have no means of knowing?—A. No, sir.

Mr. DICKSON. [The foreman.] I should like to know whether he holds Woodward's receipt for the papers that were delivered to him?

Mr. MERRICK. He says that in most cases the receipts were given, but probably not in the first cases that were called for.

By Mr. MERRICK:

Q. Were they not all charged up to him on the books in the department?—A. No, sir; they were not all charged on the books at all.

Q. [Submitting a paper to the witness.] Will you state whose writing that is?—A. That is mine, sir.

Q. [Submitting another paper to the witness.] Is that yours?—A. That is mine, sir.

The COURT. I understand that he is identifying these papers that you are now exhibiting to him as the papers he had in his custody?

Mr. MERRICK. Yes, sir.

Mr. TOTTEN. He thinks they were.

The COURT. He identifies some of them. There are some of them as to which he has no doubt.

By Mr. MERRICK:

Q. [Submitting a paper to the witness.] Is that among the papers that you identified?—A. Yes, sir.

P. HENRY WOODWARD sworn and examined.

By Mr. MERRICK:

Question. [Submitting papers to the witness.] Will you look at those papers that were in that jacket [indicating], and state who put them in that jacket, and where those papers came from. [Submitting other papers.] Here are three that Mr. Brewer spoke of and did not recognize. Keep them separate. First, whose jacket is that?—Answer. This is a jacket that is made up in the room below, that I have charge of. This jacket and jackets on envelopes of that size, and of that general character, were made up partly to protect these papers, and they give a brief account of their contents, so that we can run them over rapidly without getting the papers inside disarranged, or without wearing them out, for convenience.

Q. Whose writing is it on the back of that jacket; is that yours?—A. No, sir.

Q. Was it made in your office?—A. It was made by a clerk in our office; yes, sir.

Q. Now, sir, will you state, if you please, where you received those papers that I have just handed to you, and from whom you received them?—A. These came from Mr. Brewer, the corresponding clerk, in charge of the section to which this route belongs.

Q. The gentleman who was just on the stand?—A. Yes, sir.

Q. Are those the papers?—A. [After examining the papers.] These are the papers. I recognize these.

Mr. WILSON. I want to ask Mr. Brewer one other question.

Mr. MERRICK. I am not through with him yet.

By Mr. MERRICK:

Q. Here are the three papers that Mr. Brewer did not recognize; were those also delivered to you by Mr. Brewer?—A. Yes, sir.

Q. Put them in their proper jackets.—A. If they belong in any jacket they belong in this one [indicating]. This is a petition, and belongs in this jacket [placing a paper in one of the jackets].

Q. Have those papers been in your custody since they were delivered to you by Mr. Brewer?—A. They have; yes, sir.

Q. What is your position in the Post-Office Department?—A. An inspector.

Q. They have been all the time in your custody?—A. Yes, sir.

Q. Have they undergone any change at all since they have been in your custody?—A. No, sir.

Mr. MERRICK. Now, your honor, if I may be permitted to suggest, with a view of certainty and regularity in the proceedings, in reference to the numerous papers that will be brought in—

Mr. WILSON. [Interposing.] If you will allow me to interrupt you, I should like to ask if you are through with your examination of this witness?

Mr. MERRICK. No; not entirely. [Continuing.] I would suggest that the papers that are proved that have been in the department may be marked by some representative, or some quasi representative, of the court—the stenographer or some one else—that they may be capable of identification.

The COURT. The clerk can mark them; they have not been offered in evidence yet.

Mr. MERRICK. I will offer them when I am through with the witness. What I ask is that they should be marked as being received that they might not be displaced in passing from hand to hand. There are numerous counsel about the table, and I am afraid all the time of losing some of them myself. They had better just remain in one hand on the other side altogether. If they are scattered around among counsel the chances are there might be some accident. I do not even myself allow them to go out of my hand when I have received them from my associate. Will your honor allow them to be marked?

The COURT. I will, as soon as they are received. The court has no control over them until they are received. They are yours until then.

Mr. MERRICK. [To counsel for defense.] Gentlemen, let me have them until I offer them in evidence.

Mr. WILSON. I want them for the purposes of cross-examination.

Mr. MERRICK. I ask the court to let me have them until I offer them in evidence.

The COURT. You permitted them to go to the other side for inspection.

Mr. MERRICK. I have not offered them yet.

The COURT. You cannot offer them until the other side have had an opportunity to inspect them, because they may have some objection.

Mr. MERRICK. Not with a view to this particularly, but with a view to regularity of proceedings, I will inquire of your honor whether it is not the rule that the other side have a right to inspect them when I make the offer, and not before the offer is made.

The COURT. The court understood that you were about to make the offer, and the other side asked to inspect the papers, and they have a right to inspect the papers at this stage of the case, because they possibly may see some objection to them.

Mr. MERRICK. My object was to protect all parties against possible accident.

Mr. WILSON. If your honor please, Mr. Merrick used these papers with these witnesses for the purpose of examination-in-chief. I want the same papers that were used for the purposes of cross-examination.

The COURT. The court has said you could have them.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. When did you get these papers?—A. I got the papers in the different routes at different times.

Q. When did you get these?—A. Some time last spring a year ago.

Q. Where did you take them?—A. To Mr. Brewer.

Q. You got them from Mr. Brewer, did you not?—A. Yes, sir.

Q. Where did you take them?—A. I took them to the room that we occupied.

Q. Where is that?—A. It was on the floor below in the early stages of the investigation. The number was 59. It was subsequently changed to another corridor—22, '3, and '4.

Q. Did you give him a schedule of the papers you received at the time you got them?—A. I did not; no sir.

Q. Have these papers been handled a good many times since you got them?—A. I think they have been handled a very little. I have handled them a good deal.

Q. Do you not know that divers newspaper correspondents have had these papers?—A. They have not had them since they have been in my hands.

Q. Do you not know that these correspondents were in room 22 over and over again, and had them out on the table and examined them, and wrote newspaper articles about them?—A. They never wrote newspaper articles in the room I occupied, and never examined them in the room occupied by me.

Q. You say that no newspaper correspondent has had access to these papers since they have been in your hands?—A. I say that; yes, sir.

Q. That you swear?—A. That I swear; that is, to my knowledge. I do not think that any newspaper correspondent has had his hands on them since they have been in my custody.

Q. We will see. Now, sir, in the manipulation or examination of these papers have they been taken out of the original package in which they were when you received them?—A. Yes; I have been over the papers.

Q. And they have been rejacketed every time?—A. I intended to keep them in the jackets to which they originally belonged.

Q. Have you not rejacketed these papers?—A. I want you to explain what you mean by that question. If you mean inclosing the jackets that I found in envelopes like these, I have had it done. If you mean that I have in any way changed the jackets which were given to me, I have not had that done.

Q. I have not asked you any such question as that. I want to know whether you have not taken the papers out of the original jackets in which they were placed, and separated them and put them in different jackets?—A. I have not; no, sir. When the investigation first began the counsel employed by the Government directed the clerks to put these jackets on every separate paper. I do not know that any embraced in this indictment were jacketed in that way; but where that was done I have had the jacketing done over again, so as to bring all the papers together that belonged together.

Q. Now, were not the papers separated and put in different jackets?—A. I do not know that any were in this combination.

Q. What is the meaning of 1, 2, 3, 4, 5, 6, different jackets in these papers?—A. Well, I have had all these numbered so that we could not by any possibility lose any of them. That was my object in it.

Q. Do not let us misunderstand each other. Did you not take out these papers, separate them from each other, and then put one paper in one jacket and another paper in another jacket, and so on?—A. No, sir; I have aimed to keep them all in the same jackets in which they came to me.

Q. In this particular case have you not done the very thing I have asked you about?—A. I think not; no, sir.

Q. Here I find an envelope saying, "Distance circular, additional order on jackets," and so on. Did you put all the papers in that jacket?—A. The distance circular in that jacket might belong to an order making an allowance for a new post-office.

Q. Very well. But it is a part of the files of this case, and you took it out of the jacket and put it in this envelope, did you not?—A. I cannot say about that. A clerk in some instances might commit an error of judgment; but my instructions were to put every paper in the jacket to which it originally belonged, and they became very expert in doing that.

Q. Hold on, you need not go into that. I want to know if you did not sort these papers and put them in separate jackets?—A. If you take a jacket upon which an order was based, there might be seven or eight papers in the jacket. Where that has been the case it has been our aim to keep them all together, and if they have been separated it has been by mistake.

Q. But you found these papers all in jackets when they came to your hands?

The WITNESS. What do you mean; all these separate papers?

Mr. WILSON. Yes, sir.

A. No, sir.

Q. Did you not have an original jacket there?—A. The papers which contain orders are placed in jackets; but there are a great many papers that have no special reference to orders, and they are not inclosed in jackets. You will find them in the files loose; that is, in the files that were delivered to us. We have had them jacketed in envelopes like these.

Q. Do you wish this jury to understand you now as swearing that those papers which came in the original jackets—that for example [exhibiting one]—have not been separated and put in separate jackets?—

A. I intend to be understood as saying that our intention has been to keep them in a jacket of that sort—all that were in that jacket.

Q. Now, in the manipulation of these papers there are some papers that do not contain the post-office indorsement on them; how would you know where they belonged?—A. A paper that was not indorsed, I suppose the clerk would regard as immaterial; putting them in these jackets we should arrange them by the date on the face of the paper.

Q. So you have been rearranging these papers?—A. We have been putting them in these envelopes; yes, sir; I have tried to arrange them chronologically in these jackets, numbering them chronologically; that has been my aim; you will see the numbers 1, 2, 10, &c.; they are numbered chronologically.

Q. You did not make any memorandum of the number of papers you received?—A. Sometimes when there have been eight or ten in one jacket, petitions, &c., for convenience I put on them No. 1, 2, 3, 4, 5, and so on; I think in some cases you will find numbers on them that I found upon them; those are the only marks that I put upon any of the papers.

Q. You made a remark to Mr. Merrick when he separated the three papers, if I understood you, that the increase or expedition, I am not sure which word you used, was made upon the petition, and these papers had nothing to do with it; how do you know that?—A. I should suppose if those papers had any force at all upon the mind of the man who made the order they should be in that jacket.

Q. You make that statement from the fact that, you say, they were not in this jacket?—A. I do not say whether they were or not. Mr. Brewer did not identify them, and I see his writing is not upon them, but I found those among the papers.

Q. And you found the petition here among the papers, too, did you not?—A. Yes, sir.

Q. And you are willing to say that these papers had nothing to do with making that increase of service?—A. I should think that they had no weight at all. They ought to be in that jacket. Whether they did have any weight I could not say.

Q. You do not know how they got out of the jacket, do you?—A. No, sir.

Q. And, for anything you know, there might have been other papers in this jacket, might there not?—A. I think that every paper in these files now was in these files when they came to me. I intended to take good care of them.

By the FOREMAN. [Mr. Dickson.] I would like to ask you a question. Can an officer of one division in the Post-Office Department obtain papers from another division without giving a receipt therefor?—A. Yes, sir: that is, the Postmaster-General directed me to go through these papers, and I sent for them for that purpose.

Q. Did you make a schedule of these papers when you obtained them?—A. On some routes we have a schedule of them and on others we have not; but I think that every paper that I obtained is in the files.

Q. Mr. Brewer testified that he took no receipt from you nor did he keep a memorandum.—A. He probably would charge them to me by routes. Each route has a certain number; and I presume he would say the papers on such a route were given to me on such a day; something of that sort.

Q. Are you an inspector of this department?—A. Yes, sir.

Q. Do you not regard this as a very loose and careless way to do business for the Government?—A. I have taken great care of these papers since they have been in my possession. If you will go into the post-office files you will find no schedule of them there. They are put into certain pigeon-holes. I have certainly taken very much greater care of them than ever was taken before.

The COURT. Are you through with the cross-examination of this witness?

Mr. WILSON. Yes.

Mr. HENKLE arose and was about to question the witness.

The COURT. I must insist on enforcing the rule that was laid down at the beginning of this trial. One counsel is to examine and another to cross-examine.

Mr. HENKLE. I beg your honor's pardon. I was not in then.

The COURT. We had a wide departure from that rule this morning, and the evil became manifest. The first witness examined this morning was examined by three on one side, and, I believe, four on the other. I made up my mind then that I would enforce the rule.

Mr. HENKLE. Will your honor allow me just a moment. I may be pardonable for the reason that I was not in at the previous part of the case and this is entirely new to me; but it seems to me, that inasmuch as we represent different clients and different interests, and may look at the case from a different standpoint, that we ought to have a right, in the interest of our special clients, to ask such questions of a Government witness as we may think pertinent to the case.

The COURT. That might be possible in regard to some especial wit-

ness; but as to the evidence offered in this case it is a question whether these papers are properly identified as from the Post-Office Department. All the defendants have but one interest and one common ground. I do not know but I exhausted the liberty to which the defendants were entitled by allowing them distinct challenges.

Mr. HENKLE. How is your honor to determine in advance whether there may not be in the mind of my client, for instance, a knowledge of facts that Brother Wilson's client does not have, and about which my client might instruct me. He is in communication with his clients and I with mine, and they do not have the same information.

The COURT. There are ten counsel now in this case. Is it the right of each counsel to take up this matter seriatim?

Mr. HENKLE. I think, your honor, that wherever any one of the defendants feels that his interests require that particular questions shall be put to a Government witness upon cross-examination, he ought to have the right to put them.

The COURT. Do you say that your client in this case is interested in a particular class of questions to be put?

Mr. HENKLE. I do not know that he is; but there is a question or two that I would like to ask——

The COURT. [Interposing.] I will hear what your question is.

Mr. MERRICK. If your honor please, before the question is put, I would like to refer you to some authorities upon the subject of the right to examine and cross-examine in cases such as this. One counsel only to examine is the rule laid down in 2d Campbell.

The COURT. I know it is the rule. It is also the rule I have laid down here, and I am not going to revise it.

Mr. MERRICK. And where there are numerous counsel and numerous parties that rule is adhered to.

The COURT. I have asked General Henkle to state the particular question that he wants to ask, to see whether his client has a particular and separate interest in that question from all the others.

Mr. HENKLE. As this is an important question, and I did not know that your honor had ruled upon it, and in order that I may not be troublesome hereafter, I would like to understand the position of the court and my rights with reference to the representation of my client——

The COURT. What is your question?

Mr. HENKLE. This is an indictment for conspiracy, and these defendants claim, at all events, that they did not act in concert in these matters at all.

The COURT. That there was no conspiracy.

Mr. HENKLE. That there was no conspiracy. And if they are charged with specific acts, or the Government proves specific acts with regard to my client, we have a right to assume upon the part of the defense, and the court must presume until the verdict that he acted independently of the others, and that the knowledge of the subject is confined to him. It seems to me, therefore, that it will not do in this kind of a case, where the conspiracy is totally denied, and, at all events, before any pretense of proof of the existence of the conspiracy has been made by the Government to limit the cross-examination to one counsel representing one particular client.

The COURT. I have said that if your question discloses that your client stands in regard to it on a special ground different from the ground upon which we have had investigation, you can put the question; but if it merely relates to the same matter about which we have had examination and cross-examination already, I think that you

ought to have put your question through the counsel who was cross-examining.

Mr. HENKLE. That I will do in this particular instance, but for guidance hereafter I want to make a suggestion to the court that here no particular counsel undertakes to represent all of the defendants. That is the rule where several counsel represent all of the defendants. It is then a very proper rule that the examination shall be confined to one counsel. But here are seven or eight defendants.

The COURT. Let me hear the question.

Mr. HENKLE. I will state to your honor.

The COURT. I cannot spend all day on a question of this kind.

Mr. MERRICK. The rule is not correctly stated.

The COURT. I want to hear the question.

Mr. HENKLE. I want to ask the witness whether he made any of these indorsements upon this jacket himself or not?

The WITNESS. No, sir.

By Mr. HENKLE :

Q. Do you know who made those indorsements ?—A. I suppose that they were made by Mr. Brewer.

Q. Do you know anything about it, of your own knowledge ?

Mr. MERRICK. Do you know the handwriting ?

A. I am somewhat familiar with Mr. Brewer's handwriting ; that is all.

Q. Do you know, of your own knowledge, who made any of these indorsements ?—A. They were made before they came to me.

Q. Do you know who made them ?—A. I say, I presume it was Mr. Brewer.

Q. I do not ask you what you presume. I ask you for your knowledge.—A. I did not see any of them made.

Q. Do you know who made any of these indorsements ?—A. I did not see any of them made.

Q. Do you know who made any of these indorsements ?

Mr. MERRICK. I object.

The COURT. Stop. I will arrest this.

Mr. MERRICK. We have had enough of this.

The COURT. That is the same ground that was gone over by your colleague.

Mr. MERRICK. I offered to prove Mr. Brewer's handwriting and indorsement.

The COURT. Mr. Brewer recognized the indorsement made by himself.

Mr. HENKLE. Allow me to ask him whether, after the papers came into his possession, he made any indorsements or rejacketed the papers himself ?

The COURT. That has been inquired of already fully. There will be no possible end to this case unless we enforce some rule.

Mr. MERRICK. I now offer the papers that have been identified in evidence.

The COURT. Is there any objection ?

Mr. INGERSOLL. Yes ; we do not know what they are.

Mr. TOTTEN. Let us see them first.

Mr. MERRICK. You have examined them.

Mr. INGERSOLL. I have seen two of the papers.

Mr. TOTTEN. I have not seen any of them.

Mr. INGERSOLL. Offer the papers one at a time.

Mr. MERRICK. Your honor would not allow me to take them back after I had handed them to the other side.

The COURT. They have been handed around over there.

Mr. INGERSOLL. The moment an objection was made to anybody's seeing them, I gave them back.

The COURT. The court overruled the objection, and stated at the time that you were entitled to an inspection of them; and the court will presume that you did inspect them.

Mr. MERRICK. I shall, of course, offer them one at a time.

Mr. INGERSOLL. Then that one will not get lost.

Mr. MERRICK. I don't know about that; I am not so sure.

The COURT. Offer them one at a time, and the clerk will identify them by some indorsement.

Mr. WILSON. If your honor please, I would like to make a suggestion here. It appears that there was a package of papers that went out of the files of the corresponding clerk, and into the hands of the prosecution, and those papers are all here in court. Now, I submit that the package is the thing we are entitled to have to go before the jury if any of the papers are to go before the jury. In other words, I do not think it is right; I do not think it is law; I do not think it conduces to justice for them to come in, and out of the files of this case, out of this particular route, to pick out the particular papers that they want to put in evidence, and to keep back from the jury the other papers.

The COURT. I understood that they propose, in deference to an objection that came from Colonel Ingersoll, to offer one at a time.

Mr. WILSON. No.

The COURT. Colonel Ingersoll said "one at a time," and Mr. Merrick replied, "Yes; I will give you one at a time."

Mr. WILSON. I am not objecting to their offering one at a time, but I want the whole of the package to go in.

The COURT. If they omit to offer any paper it will be time enough then to raise the question.

Mr. WILSON. Very well.

Mr. MERRICK. I shall offer in the course of this trial, from the papers in the Post-Office Department, all the papers that bear upon any question relating to the matters in controversy, as far as I can judge. There are other papers that I shall not offer. If counsel want any other papers than those that are offered, they have access to them and can have them.

The COURT. Still, I think when you offer papers relating to one route, it will be only right that you offer all the papers that you find on file.

Mr. MERRICK. I shall offer all the papers that relate to that route, and to the order in controversy. Otherwise, there would be an immense volume of immaterial matter. The subsequent papers are immaterial.

The COURT. Oh, yes.

Mr. MERRICK. That is all I mean. I propose to deal with entire fairness, and if my judgment should err about any papers that counsel want, and they will notify the department or me, they shall have them. These papers, your honor, relate to the route from Kearney to Kent.

The COURT. What number is that?

Mr. MERRICK. Thirty-four thousand one hundred and forty-nine. The contract was offered in evidence when the court was last in session.

The COURT. The contract is already in evidence.

Mr. MERRICK. I am sorry it is not here. It ought to be. The first paper I offer in evidence is the jacket made in the Second Assistant

Postmaster-General's office by Mr. Brewer. It is dated 1879, January 10.

Mr. INGERSOLL. We object to it.

The COURT. Why?

Mr. INGERSOLL. The jacket has nothing to do with this case whatever. I want to see it. He is to offer these papers one at a time, and as he offers them we wish to look at them.

The COURT. You had a chance to look at them.

Mr. INGERSOLL. I have never seen them.

The COURT. You had the opportunity offered you.

Mr. INGERSOLL. No, sir; I have not. The court is mistaken. I want to see this jacket.

Mr. MERRICK. I will hand it to you. [Submitting the same to counsel.]

Mr. INGERSOLL. I want not only the jacket, but the rest of the clothes as they come along. [Laughter.]

The COURT. The officers of the court will keep order in the court. We will have no giggling or disorder.

Mr. MERRICK. I am glad to hear that order.

The COURT. I shall turn out and keep out any person guilty of disorder in the court.

Mr. MERRICK. I have here a little piece of paper which may belong to the jacket, or some of the inside papers. It dropped off when the papers were in Mr. Brewer's hands. I will find where it belongs, and in the mean time I will pin it to the jacket.

Mr. WILSON. I do not see that it belongs to it at all.

Mr. MERRICK. I doubt if it does.

The COURT. Examine it.

Mr. WILSON. Let Mr. Brewer see it.

Mr. MERRICK. I see where it belongs. It belongs to a paper that is in the jacket. [To the clerk.] Mark the package A with your initials.

The COURT. Let Colonel Ingersoll have that package.

The papers were submitted to counsel for the defense.

Mr. INGERSOLL. We make a point now. This is route No. 34149. It is first spoken of on page 11 of the indictment. On page 32 we again come to this same route and find the following:

And afterwards, to wit, on the said 10th day of July, in the said year of our Lord one thousand eight hundred and seventy nine, at the county and district aforesaid, and within the jurisdiction of the said court, the said Thomas J. Brady did fraudulently make and file and cause to be made and filed in the said office of the Second Assistant Postmaster-General, a certain order in writing for increased and additional service in carrying and transporting the said mails on and over the said post-route numbered 34149, from Kearney to Loup City, and for the expedition and reduction of time for carrying the said mails from the said Kearney to Loup City and for the allowance of increased pay and compensation to the said John M. Peck, as such contractor as aforesaid, and for the benefit, gain, and profit of the said John W. Dorsey, John R. Miner—

Naming them all—

without the said increased service and reduction of time then being lawfully needed and required, as he, the said Thomas J. Brady, then and there well knew as aforesaid, and with intent thereby to defraud the said United States of America, which said fraudulent order in writing is as follows.

Then it gives the order. Now, my objection is that when I come to read it I find it is not signed by Thomas J. Brady, but it is signed by one French, who was acting as Second Assistant, and consequently does not apply and is not the paper set out in the indictment. For that rea-

son they have no right, as I judge, to offer it. The indictment charges that this order was made by Brady. The order when it is presented shows that it was not made by Brady, but was made by French. Consequently I object to it on the part of Mr. Dorsey on the grounds stated.

Mr. HINE. And I object to it on behalf of Mr. Vaile, because there is no evidence so far to connect Mr. Vaile and Mr. Brady, or Mr. Brewer, who seems to have made the jacket, or anybody else, in any concert of action. Until that is done, of course, this should not be admitted. I make that objection in addition to the reason set out or given by Colonel Ingersoll.

Mr. INGERSOLL. It is signed by the wrong man.

Mr. HINE. It is signed by the wrong man so far as its admissibility under the indictment is concerned.

The COURT. I do not know whether this offer is made as an overt act or whether it is for the purpose of laying the foundation for the conspiracy. I suppose the latter. We have not reached the overt acts yet. On Friday the contract was given in evidence. Well, these papers are papers in the same case, and I suppose the offer is for the purpose of bringing all the case into the court with a view of establishing the conspiracy. Afterwards, when they reach the period of giving in evidence the overt acts, the question may come up as to this particular indorsement on the jacket.

Mr. HINE. They propose to introduce it now, and I save an exception upon the ground stated, and because it is incompetent and inadmissible on the face of the paper, as it relates to the indictment or in its connection with the averment in the indictment.

Mr. INGERSOLL. If the court please, it is set out in the indictment as an overt act on page 32.

The COURT. I know; but because it is an overt act is no reason why the same material should not be used in making out the conspiracy.

Mr. INGERSOLL. Then, the object is to introduce this jacket, signed by French, for the purpose of showing a conspiracy by Brady?

The COURT. It is for the purpose of getting the whole of the papers in this case before the court, I suppose. [To counsel for the Government.] Is that your object?

Mr. MERRICK. Yes, sir.

Mr. INGERSOLL. Then, as I understand the court, this is no evidence to show an overt act?

Mr. MERRICK. The court does not rule upon that subject yet, I suppose. If it is competent evidence I offer it. Your honor does not even know what the jacket says, or who made the order.

The COURT. No.

Mr. INGERSOLL. Then, I will ask that the attorneys for the Government state for what purpose they offer it.

The COURT. That is proper.

Mr. INGERSOLL. After we hear perhaps you will have no objection.

Mr. MERRICK. I offer it in connection with the indictment as part of the case to show the conspiracy and the transactions out of which the overt act grew.

The COURT. Now we have the object stated.

Mr. MERRICK. And I am going on to state in that connection that your honor does not know yet what is on this jacket from anything said by the counsel on the other side. They have stated to you, as Mr. Wilson stated to the jury, that French made this order. Mr. Wilson stated to the jury that French had made it; that Mr. Bliss had stated that

Brady had made it; and if he (Mr. Wilson) was not before the jury to contradict it, the jury would never know it until the records came in court. Now, sir, the order on the jacket was made by Mr. Brady. "Do this—Brady," is the order, written by the Second Assistant Postmaster-General when he was here in the city, and French but executed the mandate of his superior after he had left the city. Such is the representation, and such the general character of the representations made to this jury, and such the representation made to your honor about this jacket. Now, I offer it for the purpose that I have stated, as part of the case as to the route from Kearney to Kent, on which arose the overt acts charged in the indictment, and to bring these parties in interest and together, as I shall bring them together by the papers on this route; and continue the proof of conspiracy already offered to the court. Having brought them together, then the overt acts will come in, and whatever may be available that has gone in evidence before will be available as to the overt acts.

Mr. CHANDLER. If your honor please, I would like to make a suggestion at this stage of the case. We have now reached the point where it is undertaken to establish a conspiracy. Now, while it is perfectly competent to prove a conspiracy by circumstantial testimony, the circumstances which are offered to prove the conspiracy must be circumstances that bear against more than one. There is no difference in the legal significance of a man's statement made by himself alone, and a man's act done by himself alone. Whether it be a statement or an act it can bind nobody but himself. We have not passed beyond the line of a *prima facie* conspiracy, but we are addressing ourselves to the proof of the conspiracy itself. Now, inasmuch as the conspiracy is joint and cannot be several, no circumstance is admissible to prove that conspiracy, except it be a joint circumstance. Is it possible that the conduct of one man upon one occasion can be introduced in evidence, no one participating in that conduct but himself; and the conduct of a different person charged, at another time and another place, about another feature of this transaction can be introduced, and the sum of the two put together and a conspiracy made of them? Certainly not. The circumstances must be the circumstances which spring out of the personal conduct of the persons to be affected by the circumstances. You cannot affect half a dozen codefendants by the personal conduct of one codefendant. You cannot prove a joint crime, a crime necessarily joint, by circumstances, unless the circumstances themselves be joint. Now, they are not offering here any circumstance, or any fact in which these defendants participated together. They are not offering any paper in which any one of the defendants participated. But concede, for the argument's sake, that it does reflect the act of one. The act of that one is of no more legal consequence in establishing the conspiracy in this case than the declaration of that one made by himself away from the others. Now, here is an old case in 1st East's Crown Law which lays down the principles:

In this, as in other cases founded in conspiracy, the conspiracy or agreement among several to act in concert together for a particular end must be established by proof before the evidence can be given of the acts of any person not in the presence of the conspirators. This must be, generally speaking, done by evidence of the parties' own acts, and cannot be collected from the acts of others independent of his own, as by express evidence of the fact of a previous conspiracy together, or of the concurrent knowledge and approbation of each other's acts.

Now, no act can fall with any force against these joint defendants which is not an act of the joint defendants. No circumstance can be introduced here to affect these defendants jointly, unless that cir-

cumstance be the product of the joint conduct of the defendants. If it is the product of their conduct, and it is with their concurrence, how can the jury, with ten or fifteen persons charged with a conspiracy, carry in their minds the proportionate effect of the circumstance of this man's conduct in a transaction in which the others did not concur, and an isolated circumstance of another of the defendants done at a different time reflecting upon another branch of the case. They are proving the conspiracy now. They are not proving overt acts. When they have agreed to pursue a certain course and accomplish a certain end then the conduct of each one would be the conduct of all. But they are now laying the foundation of this conspiracy. They are laying the corner-stone of this supposed conspiracy. That being joint, no evidence can build up the conspiracy which is not in its nature joint. No evidence can bind any man as a coconspirator whose conduct does not contribute to the facts which build up that conspiracy, and they must concur at the same time. They cannot be disintegrated, one part here, and another part there; but, every circumstance which in itself is admissible in this case, at least every circumstance which is essential in this case to establish a conspiracy, must reflect the conduct of every man who is to be bound by that circumstance. Here is a case in 6th Massachusetts :

But Warren's intent to defraud Putnam is not denied, and the question is whether the jury could lawfully infer that Johnson was an associate and confederate in the same fraudulent design. He went with Warren. He was with him in the shop when he received the shoes, and when he gave the fictitious credit. If Johnson gave no evidence to explain his connection with Warren whence the jury might infer that it was innocent, they might infer that he was privy to Warren's want of credit, and that he had gotten the shoes fraudulently.

Now, here it was seriously discussed by the Supreme Court whether the fact that the case was clear against one of the defendants could be shown to implicate the other defendant any further than the other defendant actually participated in the individual circumstances which established the guilt of the real party; and the court held that he being present, he having participated in the circumstances which were relied on to convict the other person, that that was enough to send his case to the jury with the other person. But the whole logic and argument of the case is that a person cannot be convicted of a joint offense who does not participate jointly in that offense; and he cannot be held by a joint circumstance unless that circumstance springs out of his own conduct. A circumstance is irrelevant as to him unless he has had some connection with it. And can the minds of the jury be affected up to the very degree of finding one man guilty of a crime on circumstances that are sufficiently cogent to authorize that, and then because another man has some slight connection with it, transfer to the second all the force of the circumstances which bore against the first? Why, not at all. The circumstances, if they are sufficient to convict, must bear against the parties as to whom they are offered. Your honor knows the difference between proving the *corpus delicti* of an offense by circumstances and proving it by direct testimony. Of course it can be done. You can prove the *corpus delicti* of an offense by circumstances, but the circumstances have got to be so invincible in their inference that there is no explanation consistent with the innocence of the party and the circumstances which go to build up the *corpus delicti*. Here is a conspiracy, which is joint in its nature. A *corpus delicti* cannot be built up against one coconspirator and not against another, but the very nature of it is that it is joint, that it affects all in common. Now, I say that the circumstances which build up that *corpus delicti*, it

being in its nature such as affects them all alike, must be circumstances that bear against all alike, else you have one measure of proof against one and a slighter measure of proof against another, and a still slighter measure of proof against a third; and out of the sum of all the proof, if it be strong against one, the jury might convict all three, under that ruling and the third one unjustly, the testimony against him being very slight. Therefore, in order to bring him into the *corpus delicti* by circumstances, the circumstances must affect each one of the parties alike.

The COURT. How would you do in this case——

Mr. CHANDLER. [Interposing.] I would not prove it at all, if your please.

Mr. MERRICK. We can and will.

The COURT. I have not stated the proposition. Take a conspiracy formed between A, B, and C; that is proved distinctly. After the conspiracy has been half carried into effect, E comes in and joins it. Will the court exclude testimony in regard to the conspiracy of A, B, and C, because E at that time was no party to the conspiracy, but afterwards came in? You must get at the subject of the conspiracy. There is no conspiracy unless it has an object and a subject. This testimony, I understand, is for the purpose of proving the subject of the conspiracy. The contract in this case is already in evidence. It is a contract, I think, with——

Mr. MERRICK. [Interposing.] Peck.

The COURT. [Continuing.] Yes; with Peck alone. Now, why did the court allow that contract to be given in evidence against all of the defendants here? They were not parties to it. The indictment charges that a conspiracy was entered into between all these parties with reference to this subject, and the court cannot go on with the trial of the case until it gets the subject of the conspiracy before it. Now, here is a contract already in evidence. The indictment charges that the conspiracy was amongst all these parties to have the time expedited and the service increased upon this route, and all these parties were interested in that. Now, we want the records of the department on the subject of this route, to show what allowances were made. Of course, the allowances were not made in favor of all these defendants, but only in favor of the contractor, or the subcontractor; and we must get one fact in at a time. If the other defendants are not connected by proper proof with this contract hereafter, of course there is a failure on the part of the Government. But you might as well have excluded the contract itself last week as to exclude this testimony now.

Mr. CHANDLER. If your honor please, in order not to be premature with this objection, Colonel Ingersoll asked what the purpose and object of the proof was; and Mr. Merrick, as I understood, instead of saying he was laying the foundation for this—to show the course of this business—said it was offered for the specific purpose of proving the conspiracy.

The COURT. One step in that transaction, I suppose.

Mr. CHANDLER. It is a circumstance to prove the conspiracy. Now, I say if the Government is unable, under the rules of law, to prove its case, that does not put them in a position whereby they should be indulged at all. The question is whether they are offering legal proof implicating these parties in this crime. If they are not offering such proof, then it ought to be excluded. Your honor sees the nature of the indictment, and the nature of the proof.

The COURT. I think the court and the jury are both entitled to see what the Post-Office Department did in this case. The indictment says

there was a conspiracy in regard to this matter. Well, unless we have the matter proved, we cannot take a step under the indictment. We must have the matter proved. It is said by the Government that this offer is made with a view of establishing the conspiracy. That is very true, because there can be no conspiracy unless there is a subject of the conspiracy, and when they propose to prove the subject of the conspiracy that is one step toward establishing the conspiracy, I suppose.

Mr. CHANDLER. Now, before the subject of the conspiracy, being one of the attributes of the conspiracy, and that attribute only pertinent to certain peculiar and individual interests, wherein it is not shown that anybody else participated, nor it is not claimed that they did, up to this time——

Mr. MERRICK. [Interposing.] Will the counsel allow me to say a single word?

Mr. CHANDLER. Yes.

Mr. MERRICK. I offered a batch of papers. They asked that I should offer them one at a time, and I agreed to do that, and I commenced with the beginning and offered the first paper under the supposition that counsel, court, and jury would understand the offer made in view of the opening of Mr. Bliss, in which he stated the circumstances connected with this route. The papers in that batch before I get through with them will bring John W. Dorsey, Vaile, Peck, Brady, and Miner all together.

The COURT. But so far as the overt act of Brady is charged in the indictment——

Mr. MERRICK. [Interposing.] I am not offering an overt act.

The COURT. [Continuing.] In making the order, that has not been proved.

Mr. MERRICK. I am not offering that.

The COURT. And therefore I do not pass upon that branch of the subject at all as an overt act.

Mr. MERRICK. I have said a dozen times that I am not offering an overt act.

The COURT. I would not admit this order of Brady's at this stage if it were not that the indictment charges the conspiracy to relate to this particular transaction with the Post-Office Department; and if the indictment is good in its allegations, the evidence in support of the indictment cannot be bad. I think it is proper evidence in this case.

Mr. CHANDLER. If your honor please, the allegations which made this indictment good in the opinion of the court were allegations which threw these contracts all into union, which cemented them as the common property of all these parties. Now, that was the ground-work of all this conspiracy, and not a particle of testimony has been offered to prove it.

The COURT. No, no; I do not view it that way at all.

Mr. MERRICK. Oh, no.

The COURT. This indictment, if I understand it, charges a conspiracy between these parties in regard to each of these several contracts, and here we have the first one. If the allegations of the indictment are to be proved it seems to me we are in a way to do that now.

Mr. CHANDLER. The suggestion, then, is this: This conspiracy either relates to all of them or it relates to them separately.

Mr. MERRICK. It may relate to some of them.

Mr. CHANDLER. If it relates to them separately it is bad. That has been held by a number of authorities. If you charge ten persons with a conspiracy to do ten separate acts, and you prove that six of them

did four of the acts, and four of them did the other acts, and the jury so find, notwithstanding the count is good upon which the charge is made, the verdict is bad.

The COURT. Yes; but in regard to this indictment there is a charge not only that they were severally interested in the several contracts, but that they were jointly interested in the whole; that there was a pooling arrangement. There are some different contracts and different sub-contracts; but the idea is that they were in a position to assist in the general purpose. Now, it is only a question of making out the case as stated by the indictment. We cannot examine all the contracts together. We must proceed in an orderly way with one. One fact only can be established at one time.

Mr. CHANDLER. I do not deny that, if your honor please; but I say that a fact that is offered must be a fact that affects these parties jointly when you are undertaking to prove conspiracy. After you pass beyond that and are proving overt acts in pursuance of the conspiracy, then I do not claim that that will apply. But when you are undertaking to build up the conspiracy itself by evidence, the evidence offered must be such as to affect them all jointly.

The COURT. Not at all.

Mr. MERRICK. You could never prove a case in the world that way.

The COURT. There may be one circumstance which connects one party and another circumstance which connects another party, and, taking all the circumstances together, they may be all bound by the concatenation.

Mr. CHANDLER. Every circumstance which is necessary to establish this conspiracy by circumstantial evidence must be proved as a distinct circumstance, must it not? You must not leave the circumstance in doubt. There must be no doubt about it. I read from Bissell's Reports:

I have said that to establish a conspiracy or the connection of a party therewith direct proof is not indispensable, and that it may be shown by circumstances.

That we do not deny.

Where the prosecution in a criminal case rely upon circumstantial evidence, that is, upon proof of the facts or circumstances which are to be used as a means of arriving at the principal fact in question, it is a rule that those facts or circumstances must be proved in order to lay the basis for the presumption which is sought to be established. Each circumstance essential to the conclusion must be proved to the same extent as if the whole issue rested upon the proof of that circumstance.

The COURT. No doubt that is good law.

Mr. CHANDLER. Now, if this is an essential circumstance, and it must be proved with the same explicitness that we would if the parties were indicted for that one circumstance, can they prove that part of them participated in it, and the other part did not? I do not desire to argue this question against the view of the court; but what we insist upon is—

The COURT. [Interposing.] I shall admit these papers unless there is something specifically objectionable in any particular paper that may be pointed out. Mr. Merrick proposes to go over the papers and offer them one at a time. If you object to them, very well.

Mr. TOTTEN. Now, your honor, we desire right here to have your honor note an exception to the introduction of this testimony upon the grounds stated by Mr. Chandler. That is all we want to do now.

The COURT. I know. You have the largest liberty you can possibly have for the purpose of securing your remedy in the other court.

Mr. TOTTEN. I am aware of that.

The COURT. But in regard to this matter at this stage, I shall admit the testimony, and do not think it worth while to have the subject discussed any further.

Mr. TOTTEN. I am not going to say anything but simply that we except to the introduction of this testimony, because it is not a joint act or anything like a joint act.

The COURT. I understand that.

Mr. MERRICK. Let the specific objection be stated.

Mr. TOTTEN. We object to the introduction of these papers.

Mr. MERRICK. Because it is not a joint act or anything like a joint act?

Mr. TOTTEN. Never mind that.

The COURT. He withdraws that, and states it is for another purpose.

Mr. TOTTEN. We object to the introduction of this testimony.

Mr. MERRICK. I want to ask Mr. Brewer a question.

CHARLES J. BREWER recalled.

By Mr. MERRICK:

Question. [Submitting paper to the witness.] State to the court and jury whose writing that is in blue ink.—Answer. Blue pencil; Thomas J. Brady's.

Q. State whether, according to the custom of the office, that is the manner in which he made his directions as to the expedition of the mail, or otherwise?—A. The signature there alone would have been sufficient.

By Mr. WILSON:

Q. Do you know of anybody's having had access to these papers?

Mr. MERRICK. That is going over the old ground. I object.

Mr. WILSON. Not with this witness. I was going to question him before, and the court said I could recall him for the purpose.

Mr. MERRICK. When they come to their case it will be time enough.

The COURT. I want to hear his question.

Q. Do you know whether or not newspaper correspondents have had these papers in their possession, or had access to them?—A. There was a man by the name of Root, connected with the New York Times, who wrote a great deal in my room, and had access to the papers. He made an abstract of the papers in several cases in my room.

Q. He had these papers, had he not?—A. I could not say as to this particular route; but he probably did. He had a list when he came there of the expedited and increased routes, and went generally through those.

Q. How much time did he spend there?—A. I could not say; I should think altogether two or three weeks coming and going.

Q. Did any others have access to them?—A. No others that I am aware of.

Q. Who gave him permission to go there?—A. He was introduced to me by Judge Riley, the assistant to the chief clerk of the Second Assistant Postmaster-General. He said the Postmaster-General directed him to obtain what information he needed.

Q. Who was the Postmaster-General at that time?—A. Thomas L. James.

Q. Who was the Second Assistant?—A. Mr. Elmer.

Q. Is there any law relative to indorsing papers and indorsing jackets?—A. The law requires only that the correct day when they are re-

ceived shall be put upon them. That is the only law that I have any knowledge of in relation to it.

Q. And no regulation?—A. No regulation.

By Mr. MERRICK:

Q. You testified about that the other day did you not?—A. I think not, sir, on that particular point.

Q. This was whilst these papers were in your room?—A. Yes, sir.

Q. Before they went down-stairs?—A. Yes, sir.

Q. That jacket is in your handwriting?—A. Yes, sir.

Q. The whole of it?—A. The red and the black ink is in my hand.

Q. And you wrote the black ink in consequence of that "Do this. Brady?"—A. Yes, sir.

At this point (12 o'clock and 50 minutes p. m.) the court took a recess for half an hour.

AFTER RECESS.

CHARLES W. MORGAN resumes the stand at his own request.

Mr. MERRICK. Mr. Morgan asks to be allowed to make some explanation or correction, or something of that kind. I hand him to the court.

The COURT. You may make the explanation.

The WITNESS. The statement I wished to make was that I stated that the journal was sometimes signed once a week, and sometimes twice a week. I intended to say once a week, and sometimes once in two weeks.

Mr. BLISS. Another one of the witnesses stated to me that he wanted to make a correction. He is here.

HANNIBAL D. NORTON resumed the stand at his own request.

By Mr. BLISS:

Question. You stated to me that you desired to make some correction in your answer.—Answer. It seems I misunderstood Colonel Bliss's question.

Mr. BLISS. Just state in reference to what it was. I do not remember.

The WITNESS. Will you be kind enough to have your question repeated?

Mr. MERRICK. Colonel Bliss did not ask any question.

The WITNESS. Colonel Bliss or Mr. Merrick.

By Mr. WILSON:

Q. How many of the counsel have been discussing your testimony with you since you gave it to the jury?—A. I think only one, sir. He says, "You have made a mistake," and I says, "If I have, I have mistaken the question; that is all." The question was put to me by some of the counsel.

Q. Who was it?

Mr. BLISS. Myself.

A. It was Colonel Bliss.

Q. Anybody else?—A. He is the only one.

Q. Has Mr. Ker been discussing the matter with you?—A. Not at all. I says, "If I have made a mistake, as it seems I have, I would like to be recalled."

The COURT. What is the mistake?

Mr. BLISS. The question I put was this: Supposing the Postmaster-General, or the Second Assistant Postmaster-General, to make an order directing expedition which is made necessary upon the evidence before him as to the number of men and horses that would be employed; do you, in your bureau in any way revise or change that order that fixes the amount?

Mr. WILSON. No such question was asked him.

The WITNESS. That is in different shape. I can say that we had no——

Mr. WILSON. [Interposing.] Wait a moment; I say to the court that Colonel Bliss did not ask this witness any such question, nor did anybody else on the part of the prosecution.

The COURT. No such question was asked; but I remember distinctly the impression that was made upon my mind by the evidence of the witness, that it did not leave that point very clear in his testimony.

Mr. BLISS. Here is the written question.

The COURT. I construed the evidence given just as he is explaining it now; but I acknowledge that I was not clear upon that point.

Mr. MERRICK. It was anything else but clear.

Mr. BLISS. Here is the question in writing.

Mr. WILSON. If your honor please, I am not objecting to their recalling a witness to make his testimony clear, but I do not want them to recall the witness, and, under the guise of having him correct something that he had misstated, add to his testimony. If they want to add to his testimony it is all right; but to assume that he had stated such and such thing——

Mr. MERRICK. [Interposing.] How do you understand him to testify?

Mr. WILSON. I have not said anything about it.

The COURT. This Third Assistant Postmaster-General's bureau is a pay division. Of course, it has nothing to do with allowances.

Mr. MERRICK. For expedition.

The COURT. For expedition and increase of service. What the Second Assistant Postmaster-General does in regard to it is binding upon the other. They only want to see when they come to be paid that he does not pay too much, I suppose.

By the COURT:

Q. You have nothing to do with the correction of the orders of the Second Assistant Postmaster-General for expediting or allowing increased pay?—A. I have nothing to do with correcting the orders.

The COURT. I understood it in that sense before.

Mr. BLISS. I will read the identical question that I put to him before.

By Mr. BLISS:

Q. If the Second Assistant Postmaster-General makes an order directing a certain allowance, say \$10,500, for expedition, increase, reduction, or other causes, is that amount changed in your office?—A. It is not changed.

Mr. BLISS. You follow the order.

The WITNESS. Is that all the answer you require to that?

Mr. BLISS. Was that what you intended to say before?

The WITNESS. As I understood your question, it is one thing. Now, I understand it differently. I will answer if I can understand what you want.

Q. I want a correct statement of what you do in your office when an order comes to you making an increased allowance for expedition.—A. We actually have no data by which we can correct that order.

Q. And you pass it as it comes?—A. We have to pass it as it comes.

By Mr. MERRICK:

Q. All you deal with is figures as you get them?—A. Correct, sir, on that class.

By the COURT:

Q. It is none of your business?—A. Not on that class.

The COURT. That is the way I understood it.

By Mr. WILSON:

Q. An order comes up to you saying, "Increase the service so and so, and allow the contractor so many dollars, being pro rata." It comes in that form——

Mr. BLISS. [Interposing.] That is for increase of service you are speaking of?

Q. [Continuing]—and you make a calculation to find out whether that is pro rata or not, do you not?—A. One moment, sir. There are two different branches of it. You have got to see whether it is expedition, that is, reduction of hours of carrying, or increase of the service which is an increase of the number of trips. There is a distinction made between the two. They require different answers. If you mean by expedition a reduction of the number of hours in carrying the mails over this route, we have no data. That alone is in the Second Assistant Postmaster-General's office, and is based upon the number of men and horses required to carry the mail for a given distance. If the hours are reduced, that is expedited; to make it go faster, it requires more horses or more mules, as the case may be, and men, and it is then paid pro rata; that is to say, if in the first instance it took two men and four horses, and the expedition or reduction of hours took three men and four horses, it would be 50 per cent.

By Mr. MERRICK:

Q. Why so? How do you know?—A. That is the law.

Mr. MERRICK. It is not the law. We do not ask you to tell us what the law is.

The WITNESS. It is the custom.

Mr. MERRICK. We ask you to tell us facts. You know too much up there in that department.

The WITNESS. I told you in the beginning I had a general knowledge of how it was done; that is, what we suppose they do.

Q. You were asked what authority you had in your office, according to the custom of the office, to revise orders from the Second Assistant Postmaster-General's office; have you got any?—A. We have no regular authority.

Mr. MERRICK. Then, you do not exercise any except what the law gives you?

The WITNESS. In this case we cannot, because we have no data.

Q. Do you do anything except add up the figures and see if they are right?—A. We go over the whole calculation.

Mr. MERRICK. You know too much law entirely.

[The witness then left the stand.]

Mr. MERRICK. Now I will proceed to read the jacket in the case of the route from Kearney to Kent. It is dated 1879, July 10, Nebraska; No. of route, 34149; termini, Kearney and Kent; length, one hundred and thirty-one miles; number of trips per week, one; contractor, J. M. Peck; pay, \$980.24. Hon. A. Saunders forwards and urges granting petition for three times a week service to Loup City, and expedition of schedule to thirteen hours. The Senator says that the section is rapidly being settled, and that the service should be increased. Kearney R. P. O. 2428.

Mr. BLISS. I suppose that to mean the revenues.

Mr. MERRICK. [Continuing to read.] Prairie Center, twelve; Centennial, eight; Sweetwater, sixteen; Fitzallen, six; Cedarville, nothing; Loup City, one hundred and twenty-four. Pro rata cost of increase for seventy-five miles is \$1,122.41 per annum; and the contractor furnishes sworn statement that it takes two men and four animals to perform three times a week service on present schedule; that it will require six men and fourteen animals for a schedule of thirteen hours, and he offers to expedite for \$2,200 per annum. Pro rata would be \$3,928.40 per annum; increase for additional trips, \$1,122.40; expedition, \$2,200; total, \$3,520.40.

On the other side is written in blue pencil, "Do this. Brady."

The COURT. Did you prove that?

Mr. MERRICK. I proved that to be in his handwriting, and that was the way in which he gave his orders; and in consequence of it the other order was written, which is as follows:

"From August 1, 1879, increase service Kearney to Loup City, seventy-five miles, to three trips a week, and allow contractor and subcontractor \$1,122.41 per annum additional, being pro rata. Expedite schedule between the points named to thirteen hours, and allow the contractor and subcontractor \$2,200 per annum additional, being less than pro rata, as agreed. French. Order No. 6470. Date, July 10, 1879. Day-book 104. Wrote postmaster and contractor July 10 [or 20], 1879."

I will hand this to the jury and let them inspect the writing.

[The paper in question was submitted to the jury for their inspection.]

Mr. MERRICK. The next paper which I will read is the paper to which this jacket refers, viz, the petition.

The jacket just read is marked "A" for the purposes of identification. And the one about to be read is marked "1 A."

Mr. MERRICK. [Commencing to read.] "1879——"

Mr. TOTTEN. [Interposing.] We want to see that paper.

The paper was submitted to counsel for defendants to be inspected by them.

Mr. McSWEENY. Whilst they are looking at the paper I will simply make this suggestion. I will be brief, and occupy the time while they are looking at the paper. I know of no law that requires one of these petitions to be filed, or made a part of the files of the department—not for that. If that is so, their being placed on file gives them no peculiar sanctity, nor does it dispense with any proof that would be required to produce such a paper, such as its signatures, and so forth, if it were not on file. That is the whole of that point.

They are offering a paper with signatures, and they are dispensing with the proof of signatures as if they were going to charge us with a thousand dollars evidenced by some names signed to a paper. They say our proof is this: "We find it upon certain files." Now,

if it be not required to be filed, the authorities are numerous, and it is an elementary principle of law that that which is done and which is not required to be done is as though it were not done for the purposes of the record. We have numerous instances in our records of deeds at home. All of you lawyers have come across it—where there is a law requiring records of deeds and making certain copies in proof. Some people, out of abundance of caution, when they sell their house and lot, go and put their article of agreement on record, and leave it with the recorder. Our Supreme Court has passed upon that. That is a work of supererogation, and it is not all allowed by the law. It is no more secret there, and dispensing with no more line of proof than if you put it in some pigeon-hole. Now, then, we come to this. Is there any law requiring a petition to inspire the increased service to be placed on file, making it thereby a paper of record, bringing with it any sanctity or solemnity, or anything dispensatory with regard to proving it when it is produced. An answer to that question would test the soundness of my objection. In 10th Otto, page 116, it is written:

Papers made and filed in the departments without authority of law, not being required by the law, are in every sense unofficial documents, and their not belonging to the office, they are produced with all the infirmities of any other papers, and require all the necessities of proof that any common paper does.

That is all I have to say about it.

Mr. HENKLE. If the court please, I object to that paper. The indictment charges that the paper of which it complains was filed on the 10th of July, 1879. The paper that is now offered to the jury purports to have been filed on the 3d of April, 1879, so it was not a paper described in the indictment.

The COURT. What paper is this, Mr. Merrick?

Mr. MERRICK. This, may it please your honor, is the petition sent up from persons purporting to reside and probably residing along the line of the route from Kearney to Kent, and it is the paper on which the Second Assistant Postmaster-General based his action in expediting the time and increasing the service along that route. Now, if he did not act officially on this paper he acted on nothing at all, and so much the worse for him. The jacket refers to this paper, and he commits it to file as part of the case upon which he was deciding.

The COURT. I do not think that there is anything in the objection made to this evidence. What we are trying to get at now is the action of the Second Assistant Postmaster-General, and it makes no difference whether the papers that he acted upon were forged papers, or whether they were authentic papers, or what papers. We want to ascertain what he did.

Mr. HENKLE. May it please your honor, this is a question of identity. Your honor does not want papers that were not acted upon. The indictment charges that the paper acted upon was a paper filed on the 10th day of July, 1879.

The COURT. In what part of the indictment is that charged?

Mr. HENKLE. On page 29, your honor.

The COURT. That is amongst the overt acts, I suppose.

Mr. HENKLE. I do not know, your honor. It is just like the other things that are being proved. If your honor will permit me, I will read it:

And that thereupon, and in further pursuance of, and further to effect the object of their said unlawful, fraudulent, and malicious combination—

The COURT. [Interposing.] Yes, that is the act done in pursuance of the conspiracy.

Mr. HENKLE. I know, and so are these other acts that have been offered.

Mr. MERRICK. It is put in the indictment as on file on the day of the passing of the order upon the petition.

Mr. HENKLE. It is not competent to offer it now at all as the overt act, because the conspiracy has not yet been proved.

Mr. MERRICK. I think I am getting pretty well into it.

The COURT. They are working at that now.

Mr. HENKLE. I know they are working at it now, but, as I understand it, your honor has ruled that this paper is not competent for this purpose.

Mr. MERRICK. He has not ruled that.

Mr. HENKLE. How are we to be put upon notice or to make our preparations for the defense. We are informed upon the face of this indictment that the false paper of which complaint is made, and upon which it is claimed the Second Assistant Postmaster-General acted, was a paper purporting to be a petition that was filed in the office on the 10th day of July, 1879; and now the Government offers to the jury a paper with the file mark of the department of the 3d of April, 1879, before the time of the conspiracy.

The COURT. Well, it was on file then.

Mr. HENKLE. I do not know when it was on file, but it is not the paper of which we are notified.

Mr. MERRICK. We are not bound to put all our proof in the indictment.

Mr. HENKLE. Yes; but you have put it in.

Mr. MERRICK. If we do not introduce that petition it does not hurt them.

The COURT. [To Mr. Henkle.] That rule applies to the overt acts. They are not limited by that rule as to the proof of the conspiracy. They can prove anything that is relevant, in fact, at all, in making out the conspiracy. But to make out a conspiracy is not sufficient under our laws. The conspiracy is one thing, and something done under the conspiracy, in the language of the statute, is another. Unless they prove not only the conspiracy, but some act done in accomplishment or in pursuance of the conspiracy, they fail. Now, in their indictment, where they undertake to set out the acts that were done in pursuance of the conspiracy, I think they would be held to a very close proof on that subject. But there is much larger latitude allowed in regard to evidence to establish such conspiracy. They are not bound to set out in the indictment what their proofs are to establish the conspiracy. They may set out certain facts, and they may omit others, and yet they are not bound by their failure to set out all their proofs.

They can prove the fact of the conspiracy by any competent evidence, although it may not be set out in the indictment. Now, if this paper was set out even by a false description in the charging part relating to the conspiracy, I do not know that that would be a fatal objection to the testimony, because if it is admissible to prove that fact it was not necessary to allege it at all in the indictment, and if they allege it erroneously, I do not know, but that it could be objected to. But when they come to the part of the indictment where they are bound to state a specific act done in pursuance of the conspiracy, there they are bound to set it out. At present this testimony is admitted for the purpose of showing that there is something to conspire about.

Mr. HENKLE. Then, your honor rules that this testimony at this stage is only admissible for the purpose of proving the conspiracy.

The COURT. Tending in that way—to lay the foundation for the conspiracy; because there cannot be a conspiracy unless there is something to conspire about, and all this proof is for the purpose of showing that there was something for this conspiracy to relate to.

Mr. HENKLE. Then, it is not admissible at this stage for the purpose of proving the overt acts?

The COURT. No, sir; I do not admit it for that purpose.

Mr. HENKLE. Your honor will permit Mr. Miner to reserve an exception to the ruling.

The COURT. Yes.

Mr. TOTTEN. This is an evidence that a Senator of the United States was the man who committed the wrong. He filed it in the department.

The COURT. The Government is not bound to prosecute every guilty man.

Mr. MERRICK. In behalf of that Senator whom Mr. Totten wants to arraign, I beg leave to say to your honor that had the department done no more than that Senator asked to be done, there would be no blame possible on the part of the Second Assistant Postmaster-General.

Mr. TOTTEN. Your honor will give us all an exception.

Mr. MERRICK. You can have ten exceptions to that point. [Reading.]

Eighteen hundred and seventy-nine, April 30, Nebraska. No. 34149, for increase and expedition.

That is the post-office indorsement. The indorsement on the petition is this:

Senate Chamber, February 16, 1879. The Loup Valley is a very large and fertile one, and is being settled up rapidly—

Mr. MCSWEENEY. [Interposing.] Is that letter purporting to be signed by somebody?

Mr. MERRICK. Yes.

Mr. MCSWEENEY. That brings up my objection. I suppose the court means to overrule it.

The COURT. Oh, yes.

Mr. MCSWEENEY. Then we except to it. It does not dispense with any proof that will be necessary. If it had been found down in the hotel, or any place else, its not being a paper requisite to the files, and we having no control of the department, it is nothing on the doctrine of an estoppel.

The COURT. It is admitted for the purpose of showing upon what the action of the Second Assistant Postmaster-General proceeded.

Mr. MCSWEENEY. And we saying it is a letter written by somebody, purporting to be signed by somebody, that the court say is proved to be signed by him because it is found there.

The COURT. It may have been false entirely. If it were proved here to-day that that was a forgery it would not affect the admissibility of the paper in my opinion.

Mr. MERRICK. The indorsement by the clerk of the department on the jacket refers to this particular paper.

Mr. MCSWEENEY. Yes, but we have no control of the paper. There is no doctrine of estoppel that applies to us. It is not our office; we are a stranger.

Mr. MERRICK. It is the office of one of you.

Mr. MCSWEENEY. That is not legal talk.

Mr. MERRICK. Yes, it is legal talk.

Mr. MCSWEENEY. We are strangers to this proceeding.

The COURT. Who are strangers?

Mr. MCSWEENY. Mr. Dorsey, Mr. Vaile, and anybody.

The COURT. Suppose it was a false paper.

Mr. MCSWEENY. It purports to be a signature. He says, "I am going to offer a letter written by A B." Says I, "How do you know it is?" "Why," says he, "it purports to be, and I found it in a pigeon-hole in the department, which dispenses with proof of its signature."

The COURT. It would not be evidence if it had not been that there is other evidence to show, as I understand it, on this jacket that it was one of the papers upon which the action of Brady was based.

Mr. MCSWEENY. That is making the shadow to be more potent than the substance.

The COURT. It often is.

Mr. MCSWEENY. May be it is. As we deal in shadows derived—

Mr. TOTTEN. [Interposing.] As I understand it, if the jury should find that there was not sufficient in this jacket, or in the department, to authorize this expedition, then that would be evidence of guilt under the indictment.

Mr. MERRICK. That question has not come up; nobody has said a word about it.

Mr. TOTTEN. We are now to have just this question. Your honor says you want to see what excuse Brady had for writing on the back of that paper.

The COURT. I want this conspiracy before the jury. Now, a man who indorses a forged piece of paper indorses what is utterly worthless, but his indorsement makes it utterly good against him, and the other the substance. The truth is you are putting the cart before the horse. The signature of the party charged is the substance. The other is the shadow, and it has become the substance by his indorsement.

Mr. MCSWEENY. My objection is that the cart and horse are not hitched.

The COURT. I do not want to have to decide the same question every five minutes. I have determined, and you have your exception, that the papers in this case, so far as they serve to show the subject of conspiracy, are proper evidence. Now, if you have your bill of exceptions on that subject, one is enough, and let us not have any more exceptions.

Mr. MERRICK. [Resuming reading indorsement on petition.]

Senate Chamber, February 16th, 1879. The Loup Valley is a very large and fertile one, and is being settled up rapidly. I approve of the request made by the settlers for the increased service on the route between Kearney and Loup City, and shall be glad to learn that their petition has been granted. A. Saunders, U. S. S.

I call your honor's attention to the letter where he approves of the request made by the settlers for *increased service*, in contra distinction to *expedition*. That is dated—

Mr. TOTTEN. [Interposing.] Are you ready to argue this now; if you are, we are ready.

Mr. MERRICK. I am not myself quite ready, but I shall be when, against their repeated exceptions, I get my testimony before the jury. This is dated "Senate Chamber, February 16, 1879; filed April 3, 1879."

Mr. WILSON. So far as I am concerned, I am not objecting to these papers going to this jury. But I do think that in reading the papers to the jury it is not proper for Mr. Merrick to stop and comment on these papers unless we have an opportunity to reply to that comment. He took particular pains to say that he wanted your honor—which was another mode of saying he wanted the jury to do it—to notice the language particularly that was used by Senator Saunders in transmit-

ting this petition to the Post-Office Department and in recommending this to be done.

The COURT. The comment was superfluous.

Mr. WILSON. I think it was superfluous, but if your honor please he wants you to note it particularly. He uses the word "increased" just as though when Senator Saunders transmitted that petition he would stop to draw the nice distinctions between increase and expedition of service to the ordinary mind, writing about a thing of that kind and seeking facilities for those whom he represented, he would call increase both increase of trips and expedition of time.

The COURT. Judge, you have answered Mr. Merrick. We will have no more of it.

Mr. MERRICK. Allow me to explain myself to the court. Mr. Wilson. has made an attack on me.

Mr. WILSON. Oh, no; I haven't.

Mr. MERRICK. Yes; he has. I called attention to the fact that he used the word "increased," and asked you to notice it was in contradiction to expedition, because when I come to read the petition, your honor will find that the original petition was simply for an increase of service, and that expedition was a forgery put in afterwards. That is my reason.

Mr. WILSON. If you had read that without comment, I would not have said a word.

The COURT. I remember an instance of one of my former associates here who would not permit counsel to read a paper with emphasis.

Mr. MERRICK. I remember that well.

The COURT. That was carrying the rule a little too far.

Mr. MERRICK. Then, I understand that hereafter I will only emphasize.

The COURT. Then you will violate the rule laid down by my brother.

Mr. MERRICK. [Reading the petition:]

Hon. D. M. Key, Postmaster-General: The undersigned, citizens of Nebraska, and getting their mails on route No. 34149, from Kearney to Kent, respectfully represent that it is necessary that the service on said route shall be increased from one trip per week to three trips per week to Loup City, schedule thirteen hours. The country is being very rapidly—

Mr. TOTTEN. [Interposing.] Is it *very* rapidly?

Mr. MERRICK. I think it is; yes. [Continuing to read:]

The country is being *very* rapidly—

Very rapidly written just under schedule thirteen hours—

settled up by people of intelligence, and we ask the increased mail facilities for the benefit of those who have already made their homes in this section, and as an inducement to others to settle, frequent mails being one of the strongest inducements to impending settlers.

And then follows a number of names, and now I will first hand it to your honor, that you may look at the interlineation to which I have referred, and then I ask to hand it to the jury.

Mr. TOTTEN. Are you going to take his honor's testimony on the subject?

Mr. MERRICK. No; but his honor ought to know the evidence before the jury. Do you object to his having it?

Mr. TOTTEN. We want some evidence that there is some alteration.

Mr. MERRICK. I will hand it to brother Totten and swear him.

Mr. MCSWEENEY. This comes back to my objection. They are now talking about an original paper and the change. It comes back to my original objection.

Mr. MERRICK. [Submitting the paper to the jury.] Gentlemen, will you look at that paper?

Mr. TOTTEN. We object to that paper going to the jury.

The COURT. That is overruled.

Mr. MERRICK. My jacket refers to that paper.

Mr. WILSON. It was on there when Brady got it.

Mr. MERRICK. I have no doubt that it was there when Brady acted on it.

The COURT. I do not know whether I understand the practice of the department or not; but there are two sections in the act of Congress, one allowing increased compensation for the increase of service, and that compensation is proportioned to the increase of stock——

Mr. MERRICK. It is expedition.

The COURT. No, no. Where there is an allowance for increase of service the additional allowance is in proportion to the increase of men and stock.

Mr. BLISS. No; you have it wrong, your honor. Increase of service means increase of trips. Expedition means decrease of time, and the limit in the statute by men and animals is confined to the case of increase of speed or expedition. With reference to increase of trips, known as increase of service, the statute simply says that it shall not exceed pro rata, and provides no gauge there. But as to increase of speed, it provides a gauge by animals and men.

The COURT. Yes; I remember now. If there is an increase of service from one day in a week to two days in a week, then there is an allowance of double.

Mr. BLISS. An allowance not exceeding double.

The COURT. An allowance not exceeding double. If there is an increase of expedition, then the increased additional allowance is in proportion to the men and animals required.

Mr. BLISS. Yes.

The COURT. Well, now, in a case where there is an increase of expedition, and an allowance made in proportion to the men and animals, and at the same time an increase of service, the department, as I understand, allows for both.

Mr. BLISS. Yes, sir; ordinarily in separate amounts, so much for trips, and so much for expedition.

The COURT. Then it allows for all the increase of men and animals required under the one head, and allows for expedition, too, by a certain rule, and the contractor is paid for his expedition without any additional cost to him.

SEVERAL OF THE COUNSEL FOR DEFENDANTS. Oh, no, your honor; oh, no.

The COURT. When he is paid for all the men and all the animals that is all the expense he is put to, is it not?

Mr. CARPENTER. If the court please, the law in reference to trips does not use the word "increase" at all. It says "additional trips, increases," in reference to expedition. If one trip was to be run a week, and two trips are substituted for one he gets twice as much pay, or not exceeding twice as much. Now if the schedule of time is made shorter, the increased pay is in proportion to the number of men and animals; and that is all he does get.

Mr. MERRICK. Let me read this law, as we are talking of this, it is important that there should be a clear conception of it, and I premise that reading by calling your honor's attention to the single fact that there is no power directly given to change the contract or to increase

the pay in any event. The power arises by implication from a limitation imposed by the statute upon the exercise of the power.

Now, then, the statute is as follows, or rather section 618 of the rules :

Compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service, and when any such additional service is ordered the sum to be allowed therefor shall be expressed in the order, and entered upon the books of the department; and no compensation shall be paid for additional regular service rendered before the issuing of such order.

The COURT. Yes, I understand that.

Mr. MERRICK. Section 619 of these rules reads as follows :

No extra allowance shall be made for any increase of expedition in carrying the mail, unless thereby the employment of additional stock and carriers is made necessary, and in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution.

First it must be ascertained, when there is an increase of expedition, as a primary fact, that the employment of additional stock and carriers is necessary, and then the additional compensation shall be no greater than in the proportion of the original stock and carriers to the price and the additional stock to the contemplated payment. It is the simple rule of three. It shall not exceed that. And from that limitation of a power it is claimed that a power arises.

The COURT. Oh, well, I suppose that is a fair implication.

Mr. MERRICK. Well, I presume that that is so; but I only wanted to call attention to the fact that the power is not given. There is some confusion arising, I will say now to your honor, as well as hereafter, in the Revised Statutes by an erroneous collocation of language. By the language of the Revised Statutes there exists no power. It is expressly taken away, and advertisements are ordered and commanded by the Revised Statutes as they now stand, and I am not prepared to say that under a correct construction of those statutes there has been since the adoption of the Revised Statutes no power to change the contract at all. But when you come to take the act of 1872 and look at that, and inspect the Revised Statutes by that, you will find your Revised Statutes are erroneous in one particular.

The COURT. I do not know that it is important.

Mr. MERRICK. I do not intend to make any to do about it in this case.

Mr. MCSWEENEY. How many names are there on that paper ?

Mr. MERRICK. I did not count them. [To associate counsel for the prosecution.] Hand it over to brother McSweeney and let him count them. I now offer the oath of John M. Peck, among the papers.

[Submitting the paper offered in evidence to counsel for defendants.]

The COURT. [After a pause in the proceedings.] Is there any objection to that oath ?

Mr. WILSON. Yes, sir; it seems it bears date prior to the time when the conspiracy is alleged to have been entered into, and filed in the department prior to the time when they say this conspiracy was entered into.

The COURT. I do not think it is important.

Mr. WILSON. Let the objection be noted.

[The paper offered was marked by the clerk 2 A.]

Mr. MERRICK. [Reading the oath:]

CHICO SPRINGS, NEW MEXICO,
February 1, 1879.

HON. THOMAS J. BRADY,
Second Assistant Postmaster-General :

SIR: The number of men and animals necessary to carry the mails on route No. 34149, from Kearney to Loup City, three times a week on the present schedule, is two men and four animals. The number necessary to carry the mails on that part of said route, on a schedule of thirteen hours three times a week, is six men and fourteen animals.

Very respectfully,

JOHN M. PECK.

TERRITORY OF NEW MEXICO,
County of Colfax, ss :

On this first day of February, 1879, personally appeared before me, John M. Peck, and, being duly sworn, deposes and says that the above statement is true, as he verily believes.

Witness my hand and seal.

J. S. TAYLOR,
Notary Public.

And the seal is attached.

Mr. BLISS. I ask your honor's attention particularly to the numbers there.

Mr. WILSON. I hope that I may be permitted to reply to Colonel Bliss.

Mr. TOTTEN. We all want a reply.

Mr. WILSON. I would like to see this case tried like other cases are tried.

Mr. BLISS. So would I.

Mr. WILSON. Reserve your comments then.

Mr. BLISS. I make no comments. I ask the court simply to notice the numbers.

Mr. MERRICK. [Submitting to the jury the paper just read by him.] I want you to take a look at that.

The COURT. [After a pause in the proceedings.] Mr. Merrick, we are getting along slowly.

Mr. MERRICK. I am waiting upon the jury, your honor. I now offer a letter from Loup City, from Messrs. Hale and Nightingale, addressed to Senator Saunders, and proved by Mr. Woodward, as identified among the papers.

Law offices Hale and Nightingale—

Mr. TOTTEN. Let us look at that.

The letter supposed to be read was submitted to the counsel for the defense.

Mr. MERRICK. And I offer another letter to Senator Saunders from John D. Seaman, which has been proved among the papers, and another letter from the same party to Hon. E. K. Valentine.

The two letters just referred to were submitted to counsel for defendants, the papers offered to this point being marked from A 3 to A 6, inclusive, respectively.

Mr. MERRICK. [Reading:]

JOHN D. SEAMAN, DEALER IN GRAIN AND AGRICULTURAL IMPLEMENTS.
Kearney, Neb., April 14th, 1879.

HON. ALVIN SAUNDERS,
Washington, D. C.:

DEAR SIR: Has there been anything done in the matter of getting a tri-weekly mail between this place and Loup City? Our people are very desirous that the service should be increased, and if you can do anything in this matter to hurry it up and bring it to a final consummation you will confer a favor on a large portion of the people of both this county and Sherman, and also confer a favor on

Yours truly,

JOHN D. SEAMAN.

The date of that is April 14th, 1879, expressing a desire for an increase of service. The next one is headed and reads as follows :

LAW OFFICES HALE & NIGHTINGALE,
Loup City, Neb., April 26, 1879,

Hon. ALVIN SAUNDERS,
Washington, D. C. :

DEAR SIR : On behalf of the people of Sherman Valley and the northern part of Custer County receiving their mail on mail route No. 34149, we thank you for the earnest and persistent efforts made by you in our behalf. As we need additional service on said route, we earnestly request that you will exert every endeavor consistent with the high and responsible position in which you are placed to forward our interest in this matter. Our daily stage line is constantly bringing in settlers, and we constantly feel the necessity for better mail facilities because of the lack of frequent service on said route, and the ordinary course of business is greatly retarded. In some instances parties desirous of locating in these counties wholly refuse to locate in a county where they have so much difficulty in hearing from their friends at a distance. Again thanking you for your interest shown in this matter, so important to us, and again requesting you to help us in a matter of so much importance to us as settlers, and indirectly to the whole State, we are,

Very respectfully, yours,

HALE & NIGHTINGALE.

Mr. TOTTEN. What is the date of that ?

Mr. MERRICK. That is dated April 26, 1879.

Mr. TOTTEN. Is there any indorsement upon it ?

Mr. BLISS. It is indorsed by Senator Saunders.

Mr. MERRICK. The indorsement is as follows :

SENATE CHAMBER, Washington, D. C., May 3, 1879.

Respectfully referred to the Second Assistant P. M. General with the recommendation that the prayer of the petition.

A. SAUNDERS,
U. S. S.

The next letter is as follows :

KEARNEY, NEBRASKA, April 14, 1879.

Hon. E. K. VALENTINE,
Washington D. C. :

DEAR SIR : The good people of Buffalo and Sherman Counties desire me to ask you to use all honorable means to secure for them a tri-weekly mail between Kearney and Loup City. A petition was sent to the honorable Alvin Saunders some time during the winter. That was signed by a very large number of our people, but we have not been able to learn whether he received it or not, or whether he done anything with it. If you can help us in this matter you will place the entire inhabitants under obligations to you.

Respectfully,

JOHN D. SEAMAN.

It is indorsed on the back :

Referred by Mr. Valentine, M. C.

I do not think I proved that handwriting. I might as well, though.

Mr. BLISS. The indorsement is in the handwriting of Mr. Brady, which we have not proved.

Mr. WILSON. He brings it in there and delivers it to the Second Assistant Postmaster-General.

Mr. MERRICK. Were you there ?

Mr. WILSON. I was not there, but Mr. Bliss asked me to refer it to my client.

Mr. BLISS. I said the handwriting would be recognized by you, Mr. Wilson. I did not ask you to refer it to your client.

Mr. MERRICK. I now offer the jacket containing the subcontract of H. M. Vaile on this route.

The COURT. The jacket and the paper inclosed ought to be numbered, I should think, with the same number.

Mr. MERRICK. Query.

Mr. BLISS. The jacket may inclose several papers.

Mr. MERRICK. That might produce confusion. I suppose we had better number them right straight along. The clerk asked whether this was the same route. For the orderly proceeding in the case we have concluded to go on with one route and get through with it, and then take up another route.

The jacket and the paper contained in the jacket were marked 7 A and 8 A, respectively.

Mr. HINE. We make the objections heretofore made in these cases.

The COURT. Yes; we will not forget that.

Mr. TOTTEN. That subcontract is dated the 1st of April, 1879, considerably more than a year before this grand conspiracy.

The COURT. We are inquiring about the date of Brady's act. That paper might have been twenty years old.

Mr. MERRICK. The jacket is indorsed March 8, 1879; State, Nebraska; No. of route, 34,149; termini of route, Kearney to Kent; length of route, one hundred and thirty-one miles; number of trips per week, one; contractor, John M. Peck; for \$980; notified the auditor of the Treasury for the Post-Office Department of the subcontract of H. M. Vaile, whose post-office address is Independence, Mo., for service on this route, \$980 per annum, from January 1, 1879, to June 30, 1882, has been filed in this office; French; order No. 1849; date, March 8, 1879; wrote postmaster and contractor, March, 1879. That is the indorsement on the jacket in which is contained the subcontract of Mr. Vaile.

Mr. TOTTEN. From Peck to Vaile?

Mr. MERRICK. From Peck to Vaile

Mr. TOTTEN. What is the date of it?

Mr. MERRICK. [Reading from subcontract.] "This indenture witnesseth that on the 1st of April, 1878, John M. Peck, of the first part, and H. M. Vaile, of Independence, Mo., of the second part, have agreed as follows, to wit, that the said H. M. Vaile, party of the second part, jointly and severally undertakes, covenants, and agrees with the party of the first part, and binds himself to transport the United States mail on route 34149 from Kearney to Kent, and back, once a week, at \$868. It is further mutually agreed by the parties hereto that in case such service is expedited that the party of the first part shall pay to the party of the second part 100 per cent. of the amount received by said party of the first part of money received from the Post-Office Department on account of expedition in addition to the sum heretofore agreed to be paid. Signed, John M. Peck, United States contractor, by John R. Miner, his attorney in fact; H. M. Vaile; witnessed by M. C. Rerdell."

Mr. TOTTEN. Did you read it all?

Mr. MERRICK. Oh, no; do you want it all read? You can read it all if you want to. I read the substantial parts; the price that was to be paid; the percentage of increase; the signature by Miner as attorney for Peck; Vaile's signature, and Rerdell's signature as a witness.

Mr. TOTTEN. Where is John R. Miner's power of attorney to sign this?

Mr. MERRICK. I do not know anything about it. I guess he did not have any.

Mr. HINE. You had better advise with your associate counsel and find out whether he has got any.

Mr. MERRICK. Your counsel asked me a question, and I replied to it in full according to my theory.

(The papers last read were handed to the clerk and marked by him for identification 9 A, 10 A, 11 A, 12 A, 13 A, after which they were submitted to the counsel for the defense.

Mr. BLISS. We are content for our purposes to offer merely Mr. French's subcontract; but we do not wish to be open to the criticism of offering only part of the papers.

Mr. WILSON. You offer what you want, and then we will have something to say.

The COURT. What is the paper?

Mr. MERRICK. It is the subcontract of French on this same route—Charles H. French.

Mr. WILSON. Are you now offering the subcontract of French?

Mr. MERRICK. I am offering the jacket now.

Mr. WILSON. That I want to see.

Mr. MERRICK. You have just this minute had it. I handed them all to the counsel on the other side.

The COURT. When was this jacket made?

Mr. MERRICK. I will tell your honor as soon as I get it back.

Mr. WILSON. [Handing subcontract to counsel for the Government.] This does not purport to be anything but a copy of the paper.

Mr. BLISS. The law says he shall file in the office of the Second Assistant Postmaster-General a copy of the contract.

Mr. WILSON. It is not certified to.

Mr. MERRICK. It comes from the records of the office.

The COURT. There is a substitution provided for, and that is a production of a paper from the original depository.

Mr. TOTTEN. The original is on file there, your honor.

Mr. BLISS. No; it is not, and never has been.

Mr. TOTTEN. Well, your honor, it is not proper evidence. There is no law to make a copy of a contract evidence.

Mr. MCSWEENEY. Is it certified by a postmaster at a termini of the route?

Mr. MERRICK. Yes; it is certified by a postmaster at a termini of the route.

[Mr. Merrick then read the certificate attached to the paper in question.]

Mr. MCSWEENEY. The copy of the subcontract filed must be certified to be a copy of the original by a postmaster at one of the termini of the route.

Mr. MERRICK. I do not see any such certificate on the subcontract.

Mr. MCSWEENEY. I call the attention of the court to page 147 of the regulations, section 626.

Mr. BLISS. I will read the law:

When any person or persons being under contract with the Government of the United States for carrying mails, shall lawfully sublet any such contract or lawfully employ any other person or persons to perform the service by such contractor agreed to be performed, or any part thereof, he or they shall file in the office of the Second Assistant Postmaster-General a copy of his or their contract; and thereupon it shall be the duty of the Second Assistant Postmaster-General to notify the auditor of the Treasury for the Post-Office Department of the fact of the filing in his office of such contract.

That is in the statute passed May 17, 1878. In the regulations there is this provision:

A subcontractor in order to avail himself of the benefits of the preceding section and receive payment from the Post-Office Department, must file a copy of his subcontract in the office of the Second Assistant Postmaster-General, furnishing therewith his post-office address. * * * The copy of subcontract filed must be certified to be a true copy of the original by a postmaster at one of the termini of the route therein sublet.

The suggestion I make in this connection is simply this: The statute says he has a right to file a copy of his contract. The regulations at most go to say that before settlement it must be certified by a postmaster at either end of the route. This contract has been filed, the Postmaster-General has accepted it, and has given notice to the Auditor of the Treasury for the Post-Office Department. It is not certified by a postmaster under that regulation.

Mr. MERRICK. I add to that this——

The COURT. [Interposing.] We will admit it.

Mr. HINE. Allow me to state an additional exception.

Mr. MERRICK. I was going to say if you are going to make any further remark about it——

The COURT. [Interposing.] I do not want any more remarks about it.

Mr. HINE. This is a paper that purports to have been filed in February, 1882.

The COURT. We are not making out a title here.

Mr. HINE. I am noting my exception so that it will be spread upon the record.

The COURT. We want to know what the Second Assistant Postmaster-General did, and what papers he had before him to act on.

Mr. WILSON. This paper was not in the department at all at that time.

Mr. INGERSOLL. This paper was filed in 1882, and in consequence it could not have been taken into consideration.

The COURT. Was this paper filed in 1882?

Mr. MERRICK. Yes.

Mr. HINE. I attempted to make myself heard upon an additional exception to this, your honor, to the effect that it was filed in February, 1882.

Mr. MERRICK. I will get rid of all this. I will not offer it at the present time. I will put the contractor on the stand. Those are all the papers that I at present know of on record with regard to this route affecting the questions before the court. I shall follow this, your honor, either now, or in the morning, as you may choose to direct, with the parole proof, introducing first the subcontractor, a copy of whose contract I have just withdrawn, and others, the postmaster, and so forth, in connection with the papers I have already offered to the court. Being so late in the evening, but a few minutes remaining to the hour of adjournment, it would hardly be proper, I presume, without your honor's direction, to put a witness on the stand.

The COURT. No; I think not; but I hope we will get over more ground to-morrow than we have gotten over to-day.

Mr. MERRICK. I have traveled as rapidly as I could, your honor.

Mr. BLISS. After the objections are disposed of on this route we will get along faster.

Mr. TOTTEN. If the gentlemen had indicted all the people on these routes it would have taken still longer, your honor.

Mr. MERRICK. The grand jury did not think they were guilty.

Mr. BLISS. We should have had more counsel than we have now, if they had been indicted.

At this point (2 o'clock and 57 minutes p. m.) the court adjourned till to-morrow morning at 10 o'clock.

TUESDAY, JUNE 13, 1882.

The court met at 10 o'clock a. m.

Present, counsel for the Government and for the defendants.

Mr. MERRICK. If your honor please, my associate has some of my papers, and does not seem to have come in yet, but I will proceed to offer what I propose as matters of record in connection with this route; and I will say to your honor, and to the learned counsel on the other side, as I just stated to brother Wilson, that my purpose is in the course of the examination to take up route after route systematically. As I take up each route we will put in whatever testimony we may have. I do not think the introduction of the route testimony will be much interspersed with other testimony, except parole testimony in connection with the particular routes.

Mr. HENKLE. Are you going to take them up in the order in which they are named in the indictment?

Mr. MERRICK. Not necessarily.

Mr. WILSON. If you can do so, I wish you would inform us what route you will take up next after this one?

Mr. MERRICK. Certainly. My purpose is to take up after this one the route from Saint Charles to Greenhorn.

The COURT. What is the number?

Mr. MERRICK. No. 38135. I think I will take it up next. It depends somewhat upon the number of witnesses, their distance from here, &c. I may take up another one. As to the route on which we were offering testimony yesterday, I now propose to offer the certificate of Mr. Ela, the Auditor of the Treasury for the Post-Office Department, as to revenues for part of 1878, 1879, 1880, and part of 1881.

Mr. TOTTEN. Will you let us look at that?

Mr. MERRICK. Certainly.

The COURT. That is already in evidence in a printed document.

Mr. MERRICK. I do not know. It may be. I was going to say in this connection that in reference to each one of these routes in the indictment I shall offer a similar piece of evidence without regard to its effect. If I offer in one case what may be advantageous to the Government, it is proper that I should offer the same evidence as to all. [Submitting paper in question to the counsel for the defense.] Whilst the gentlemen are looking at that paper, I will also say that I shall offer immediately afterwards a certificate in reference to the payments made upon the several routes in the indictment, showing to whom payments were made, contractor, subcontractor, assignee, or whoever it may be. You may look at that paper, also, gentlemen [submitting the same to counsel for defense].

Mr. HENKLE. Does that show the fines and deductions?

Mr. MERRICK. It shows everything.

Mr. COLE. Does it include all the routes in the indictment?

Mr. MERRICK. I offer this morning the payments on this route, and I shall offer the payments on each route as it is introduced. It is all on that paper. I shall offer the evidence in that way in order to prevent confusion in the minds of the jury. They will thus be enabled to clearly understand one route before the next is taken up. I will proceed systematically, taking one route and finishing it up, putting it aside and then taking up another, and the jury can put the recollections of one in the store-house of memory while they are going on to another.

Mr. INGERSOLL. I suppose this evidence does not go to any overt act yet.

The COURT. I do not understand that it does. It is just like a case of a man on trial for homicide.

Mr. INGERSOLL. I know; but they are tuning the fiddle. They have not struck a tune yet.

The COURT. A man is murdered in his house at night, and evidence is offered of what time he came home at night, where he slept, whether he was in the house early or not, who were in the house—on that general principle to ascertain the surroundings of the case.

Mr. TOTTEN. If these items of testimony are confined within that limit we have no particular or serious objection; but if this evidence is introduced now either for the purpose of proving the combination and conspiracy, or for the purpose of showing the overt act necessary to consummate the offense charged, we do object. I may be permitted to repeat this morning, your honor, that, in my judgment, no testimony of this character can be introduced to prove a combination such as is charged in this indictment. That must be proved by evidence *aliunde*, and if there is to be any proof of a combination by acts, those acts must be brought home to each individual member of this alleged conspiracy.

The COURT. Nobody is going to be found guilty in this court whose guilt is not brought home to him.

Mr. TOTTEN. That is some comfort, your honor.

Mr. MERRICK. I think the counsel might have had that comfort before. Although the testimony is in, I controvert the position he has taken.

Mr. HINE. I note an objection on behalf of Mr. Vaile, on the additional ground that the testimony is immaterial. It is no concern of ours whether the revenue was large or small, whether they carried the through mail, or whether they did not.

The COURT. The reporter will note Mr. Hine's objection.

[The objection is accordingly here noted.]

Mr. MERRICK. Does your honor desire to look at the certificate of the auditor to see if it is in proper form? [Exhibiting paper to court.]

The COURT. I see the seal very distinctly.

Mr. MERRICK. I offer now the certificate of the auditor as to the revenues derived from the line from Kearney to Kent, during two quarters of 1878, the third and fourth; the first, second, third, and fourth quarters of 1879—

Mr. TOTTEN. [Interposing.] Are you reading to the jury?

Mr. MERRICK. Yes; I am reading to the jury.

Mr. TOTTEN. We object to that, your honor. It is not a matter of importance at all, in this case, whether the revenues were great or small. It is not an item of testimony certainly.

The COURT. Mr. Hine has made an objection on that point, and his exception is noted.

Mr. TOTTEN. I thought he was objecting on some other ground.

Mr. MERRICK. Shall I proceed?

The COURT. Certainly.

Mr. MERRICK. I offer a certificate of the revenue of these post-offices during the third and fourth quarters of 1878, and the first, second, third, and fourth quarters of 1879, the first, second, third, and fourth quarters of 1880, and the first and second quarters of 1881.

The COURT. Hand the paper to the clerk and let him mark it.

[The paper was handed to the clerk and by him marked 14 A.]

It is as follows:

Form of certificate.

(F.)

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, J. H. Ela, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this office showing the gross and the net revenues of the post-offices located on route No. 34149, Kearney to Kent, Nebraska, from July 1, 1878, to June 30, 1881.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, this 12th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.]

J. H. ELA,
Auditor.

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Kearney, Nebr	3 qr., 1878..	\$772 72	.....	\$316 22	.....
	4 " " ..	1, 127 94	.....	607 42	.....
Supplied by railroad and six other routes....	1 " 1879..	1, 177 84	.....	627 84	.....
	2 " " ..	1, 119 36	.....	569 36	.....
		4, 203 86	.....	2, 120 84	.....
	3d qr., 1879..	1, 233 84	.....	683 84	.....
	4 " " ..	1, 294 89	.....	644 89	.....
	1 " 1880..	1, 176 15	.....	526 15	.....
	2 " " ..	1, 196 57	.....	546 57	.....
		4, 901 45	.....	2, 321 45	.....
	3 qr., 1880..	1, 116 28	.....	466 28	.....
	4 " " ..	1, 502 78	.....	875 78	.....
	1 " 1881..	1, 187 41	.....	559 91	.....
	2 " " ..	1, 086 24	.....	458 74	.....
		4, 892 71	.....	2, 360 71	.....
Prairie Centre, Nebr	3 qr., 1878..	2 40	.....	1 19	.....
	4 " " ..		.....		\$0 35
	1 " 1879..	3 94	.....	8 26	.....
	2 " " ..	3 91	.....	3 14	.....
		9 25	.....	7 59	.....
			Less credits...	35	.....
				7 24	.....
	3d qr., 1879..	2 92	.....	1 91	.....
	4 " " ..	4 42	.....	58	.....
	1 " 1880..	11 18	.....	5 26	.....
	2 " " ..	5 75	.....	1 81	.....
		24 27	.....	9 56	.....
	3 qr., 1880..	4 91	.....	1 47	.....
	4 " " ..	6 62	.....	1 87	.....
	1 " 1881 ..	10 37	.....	3 96	.....
	2 " " ..	9 95	.....	3 59	.....
		31 85	.....	10 89	.....
South Loup, Nebr. In the advertisement, but was discontinued January 9, 1877	3 qr., 1878..	10 18	.....	4 07	.....
Centennial, Nebr	4 " " ..	3 25	.....	1 99	.....
Discontinued April 20, 1880	1 " 1879..	5 96	.....	8 53	.....
	2 " " ..	1 45	.....	09	.....
		20 84	.....	9 68	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
	3 qr., 1879..	\$2 43	.....	\$0 02	.....
	4 " " ..	6 82	.....	2 62	.....
	1 " 1880..	.....	Discontinued..	.....	.....
	2 " " ..	.....	.....	.....	.....
		9 31	.....	2 64	.....
Sweetwater, Nebr.....	3 qr., 1878..	11 71	.....	6 01	.....
	4 " " ..	10 00	.....	4 00	.....
	1 " 1879..	12 74	.....	8 47	.....
	2 " " ..	16 99	.....	10 73	.....
		51 44	.....	29 21	.....
	3 qr., 1879..	10 25	.....	3 68	.....
	4 " " ..	23 60	.....	11 95	.....
	1 " 1880..	33 06	.....	16 94	.....
	2 " " ..	43 13	.....	26 19	.....
		110 04	.....	58 76	.....
	3 qr., 1880..	51 04	.....	32 59	.....
	4 " " ..	50 17	.....	29 10	.....
	1 " 1881..	62 44	.....	37 29	.....
	2 " " ..	37 20	.....	14 20	.....
		200 85	.....	113 18	.....
Fitzalon, Nebr.....	3 qr., 1878..	2 72	.....	1 63	.....
	4 " " ..	3 25	.....	1 58	.....
Not in advertisement.....	1 " 1879..	5 77	.....	3 36	.....
	2 " " ..	.....	.....	.....	.....
		11 74	.....	6 57	.....
	3 qr., 1879..	9 88	.....	6 02	.....
	4 " " ..	5 73	.....	2 59	\$1 67
	1 " 1880..	2 48	.....	.....	.....
	2 " " ..	4 91	.....	288	.....
		23 00	.....	11 49	1 67
			Less credits...	1 67	.....
			.....	9 82	.....
	3 qr., 1880..	5 79	.....	1 60	.....
	4 " " ..	6 08	.....	3 00	.....
	1 " 1881..	8 39	.....	5 61	.....
	2 " " ..	4 33	.....	2 15	.....
		24 59	.....	12 36	.....
Cedarville, Nebr.....	3 qr., 1878..	23 93	.....	20 77	.....
	4 " " ..	.....	.....	.....	5 39
Also on route No. 34197.....	1 " 1879..	8 00	.....	.....	.....
	2 " " ..	3 85	.....	54	.....
		35 78	.....	21 31	.....
			Less credits ..	5 39	.....
			.....	15 92	.....
	3 qr., 1879..	20 95	.....	16 32	.....
	4 " " ..	.....	.....	.....	5 72
	1 " 1880..	16 38	.....	6 31	.....
	2 " " ..	13 75	.....	4 25	.....
		51 08	.....	26 88	.....
			Less credits ..	5 72	.....
			.....	21 16	.....
	3 qr., 1880..	11 12	.....	82	.....
	4 " " ..	21 24	.....	8 86	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
	1 " 1881..	\$15 96	.....	\$1 96	.....
	2 " " ..	15 04	.....	2 79	.....
		62 66	.....	14 45	.....
Leop City, Nebr	3 qr., 1878..	37 30	.....	8 05	.....
	4 " " ..	72 44	.....	30 91	.....
Also, on route No. 34143.....	1 " 1879..	85 06	.....	35 98	.....
	2 " " ..	116 81	.....	47 04	.....
		311 61	.....	121 98	.....
	3 qr., 1879..	131 83	.....	56 54	.....
	4 " " ..	148 94	.....	62 91	.....
	1 " 1880..	163 08	.....	60 02	.....
	2 " " ..	164 17	.....	63 19	.....
		608 02	.....	242 66	.....
	3 qr., 1880..	164 65	.....	81 88	.....
	4 " " ..	161 20	.....	74 77	.....
	1 " 1881..	155 78	.....	64 95	.....
	2 " " ..	155 57	.....	62 32	.....
		637 20	.....	223 92	.....
Arradia, Nebr.....	3 qr., 1878..	5 50	.....	3 18	.....
	4 " " ..	6 57	.....	2 83	.....
Also on route No. 34147.....	1 " 1879..	9 58	.....	4 77	.....
	2 " " ..	7 30	.....	3 03	.....
		28 95	.....	13 81	.....
	3 qr., 1879..	9 90	.....	5 81	.....
	4 " " ..	7 95	.....	3 10	.....
	1 " 1880..	14 11	.....	6 29	.....
	2 " " ..	9 34	.....	3 81	.....
		41 30	.....	19 01	.....
	3 qr., 1880..	10 93	.....	4 93	.....
	4 " " ..	11 35	.....	4 90	.....
	1 " 1881..	14 10	.....	7 70	.....
	2 " " ..	19 97	.....	14 27	.....
		56 35	.....	31 80	.....
Manchester, Nebr.....	3 qr., 1878..		.....		.....
	4 " " ..		.....		.....
	1 " 1879..		.....		.....
	2 " " ..		.....		.....
		
Not in advertisement.	3 qr., 1879..		.....		.....
	4 " " ..	4 88	.....	2 71	.....
	1 " 1880..	4 18	.....	1 60	.....
	2 " " ..	2 94	.....		\$0 71
		12 00	.....	4 31	.....
			Less credits...	11	.....
				4 20	.....
	3 qr., 1880..	4 12	.....	1 97	.....
	4 " " ..	6 21	.....	3 98	.....
	1 " 1881..	4 66	.....	1 84	.....
	2 " " ..	6 00	.....	3 06	.....
		20 99	.....	10 87	.....
Douglas Grove, Nebr.....	3 qr., 1878..	7 30	.....	2 95	.....
	4 " " ..	6 61	.....	2 02	.....
	1 " 1879..	10 37	.....	5 31	.....
	2 " " ..	11 51	.....	4 26	.....
		35 79	.....	14 54	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
	3 qr., 1879...	\$11 99		\$5 07	
	4 " " "	9 78		4 36	
	1 " 1880	10 29		3 96	
	2 " " "	11 24		6 07	
		43 23		19 96	
	3 qr., 1880..	19 64		5 06	
	4 " " "	12 40		4 64	
	1 " 1881..	18 77		9 98	
	2 " " "	18 43		8 90	
		69 44		29 16	
Longwood, Nebr.....	3 qr., 1878..				
	4 " " "				
	1 " 1879	83		No net	80 00
	2 " " "	2 79			1 57
		3 55			1 08
	3 qr., 1879..	5 56		1 50	
	4 " " "	10 50		2 21	
	1 " 1880..	13 19		2 81	
	2 " " "	11 71		1 40	
		40 96		7 92	
	3 qr., 1880..	15 56		61	
	4 " " "	22 88		4 33	
	1 " 1881..	16 76		1 50	
	2 " " "	12 42		95	
		67 62		7 19	
Kent, Nebr.....	3 qr., 1878..				2 11
	4 " " "	4 12		48	
	1 " 1879	10 89			
	2 " " "	10 91		3 73	
		25 92		10 64	
			Less credits	2 11	
				8 53	
	3 qr., 1879..	12 23		4 06	
	4 " " "	2 79			3 70
	1 " 1880	16 83		8 42	
	2 " " "	5 63		04	
		37 48		18 52	
			Less credits	3 70	
				6 82	
	3 qr., 1880..	3 51			3 29
	4 " " "	6 45			3 54
	1 " 1881..	10 44			1 08
	2 " " "	10 63		1 39	
		30 93		1 39	6 30
			Net		1 22
			Excess credits		6 96

Mr. MERRICK. I may state, if it is not improper—and I hardly think it is—that from the figures made up on this paper it appears that the average annual net revenue of one year was \$227, another \$404, and another \$513. If your honor please, I will allow the stenographer to have this paper.

The COURT. As part of the evidence?

Mr. MERRICK. As part of the evidence.

Mr. WILSON. If you offer it in evidence, of course it is to go in as part of the evidence.

Mr. MERRICK. Of course, the stenographer takes down the fact that I offer a paper. He does not always take the contents of the paper, and I do not give him the papers I offer in evidence as a rule, because I do not care about his having the custody of them; but this paper being of an unusual character he might as well take it.

The COURT. You can make it an exhibit.

Mr. MERRICK. I intended at first that it should be referred to as an exhibit simply; but brother Wilson wants it all printed for his inspection.

Mr. TOTTEN. If it is offered in evidence it should be printed. We have a right whenever a record is produced from the Post-Office Department, either original or a certified copy, to demand that it remain here subject to our inspection when we desire to use it, or to examine it for the purposes of the defense.

Mr. MERRICK. Unquestionably they can have that right. Nobody denies it.

Mr. TOTTEN. I called for the contracts yesterday and they were not here.

The COURT. Proceed, Mr. Merrick; and let us do a little more work to-day than we did yesterday.

Mr. WILSON. If your honor please, it seems to me that the record is being imperfectly made up. For example, the petition that was presented in evidence yesterday is left out of the record. The indorsement upon that petition made by Senator Saunders is copied in the record.

The COURT. We are not guided by the stenographer's report. We are guided by the evidence which is received.

Mr. WILSON. I know, your honor, but here is the difficulty; when we come to examine this case we must have these records in court.

The COURT. You shall have them. They are in court.

Mr. MERRICK. I now offer, under a similar certificate of the auditor, the payments made on this route from Kearney to Kent, between November 4th, 1878, and January 13th, 1882. My brothers have seen it. I will read it to the jury if they desire it or let it stand over.

Mr. TOTTEN. I presume it is all right. Why not leave it until you get through?

Mr. MERRICK. I want it to go with the route in the report in regular order.

The paper in question was marked 15 A, by the clerk.

The part of the paper relating to route 34149 is as follows:

Statements and recapitulation of payments made to Dorsey, Miner, and Peck, their subcontractors and assignees on nineteen routes below described.

Route.	Termini.		State.	Pay accrued.	Fines, deductions, &c.	Remissions, &c.	Total payments.
	From—	To—					
34149	Kearney.	Kent.	Nebraska.	\$11,057 31	\$217 71	.....	\$10,839 60

Post No.	Termini.			Auditor's report.		Period for which paid.	Pay per quarter.	Less fines and discounts.	Amount of payment.	Warrant or draft.		To whom paid.	Contractor, assignee, or assignee.
	From—	To—	State.	No.	Date.					No.	Date.		
24140	Kearney	Kearney	Nebraska	27772	Nov. 4, 1878	3 qrs., 1878	\$245 06	.....	\$245 06	W. 11535	Nov. 6, 1878	John M. Pack	Contractor.
				1543	Jan. 21, 1879	4 qrs., 1878	245 06	.....	945 06	W. 14004	Jan. 22, 1879	H. M. Valle	Assignee.
				9530	Apr. 14, 1879	1 qr., 1879	245 06	.....	245 06	W. 2716	Apr. 15, 1879	H. M. Valle, Lewis Johnson & Co.	Assignee.
				18535	July 15, 1879	2 qrs., 1879	245 06	.....	245 06	W. 5908	July 16, 1879	H. M. Valle, W. N. Roach, cash.	Assignee.
				27303	Oct. 18, 1879	3 qrs., 1879	795 78	.....	795 78	W. 39218	Oct. 20, 1879	H. M. Valle, W. N. Roach, cash.; J. A. J. Crowell, prest.	Assignee.
				1463	Jan. 31, 1880	4 qrs., 1879	1,075 66	.....	1,075 66	W. 19802	Jan. 22, 1880	H. M. Valle, Thos. C. Pearall, cash.	Assignee.
				9841	Apr. 14, 1880	1 qr., 1880	1,075 66	.....	1,075 66	W. 3923	Apr. 15, 1880	H. M. Valle, J. A. J. Crowell prest.	Assignee.
				19168	July 16, 1880	2 qrs., 1880	1,075 66	.....	1,075 66	W. 6042	July 21, 1880	H. M. Valle, Thos. C. Pearall, cash.	Assignee.
				98484	Oct. 16, 1880	3 qrs., 1880	1,075 66	.....	1,075 66	W. 39581	Oct. 14, 1880	H. M. Valle, Thos. C. Pearall, cash.	Assignee.
				1598	Jan. 17, 1881	4 qrs., 1880	1,075 66	.....	1,075 66	W. 1350	Jan. 18, 1881	H. M. Valle, Thos. C. Pearall cash.	Assignee.
				14478	Apr. 30, 1881	1 qr., 1881	1,075 66	143 95	932 41	W. 5944	May 2, 1881	H. M. Valle	Subcontractor.
				25513	Aug. 5, 1881	2 qrs., 1881	1,075 66	74 48	1,001 20	W. 2071	Aug. 8, 1881	H. M. Valle	Subcontractor.
				30635	Oct. 24, 1881	3 qrs., 1881	1,071 29	.....	1,069 11	W. 4864	Oct. 26, 1881	H. M. Valle	Subcontractor.
				1506	Jan. 13, 1882	4 qrs., 1881	620 30	.....	9 18	W. 4883	" "	John R. Miner	Assignee.
							11,057 31	217 71	10,839 60	W. 344	Jan. 14, 1882	H. M. Valle	Subcontractor.

Mr. WILSON. The stenographer informs me that I am in error, and that the body of the petition is printed in the record. The names are not printed, and therefore my eye did not catch it.

Mr. MERRICK. I did not read the names. I said it was numerously signed.

Mr. WILSON. In justice to the stenographer I deem it proper to make this statement.

ALVIN SAUNDERS, sworn and examined.

By Mr. BLISS:

Question. You are a Senator in the Senate of the United States from the State of Nebraska?—Answer. Yes, sir.

Q. How long have you been such?—A. Over five years, sir; five years last March.

Q. I hand you the petition marked 1 A. Please look at it and see if the indorsement on the back is in your handwriting?—A. [After examining the same.] Yes, sir; that is in my handwriting.

Q. Was it made at or about the date it bears?—A. Well, I do not recollect the date now exactly. I know it must have been about that time, but I would not be able to state exactly.

Q. Have you any recollection of how it came to you?—A. I do not recollect. About that time there were a number of papers presented of that character; that is, of a character to ask for increased mail facilities, for the more frequent carrying of the mail. I might say this: In our new countries we generally get our mails first about once a week, and afterwards we work it up to two or three times a week if we can, and so on to daily mails if the business will justify it.

Q. The petition was presented to you by somebody?—A. It was presented to me by somebody. I do not recollect whom. I think it was a gentleman from Kearney, Nebraska, but I would not state positively that he was the one. I know he presented some papers to me.

Q. Do you know what you did with it?—A. Well, usually, when papers are presented to me they come by mail more frequently than by hand, and if I knew the writer well or knew a number of subscribers to the petition I generally said so, and if I did not I indorsed it—generally said, I think, if I knew them, that the parties were respectable men, and asked that their prayer might be granted. If I did not know them I referred it without any comment particularly.

Q. Assuming a paper to have been indorsed by you on the 6th of February, and not to have reached the department until the 3d of April, would you have retained such a paper that length of time in your possession?—A. No; I think not.

Q. Please look at the words "schedule thirteen hours." Let me ask you if you have any knowledge whether those words were there when the petition was indorsed by you?—A. I could not tell now as to that, although it seems as though my attention ought to have been called to the different writing and different ink; but at this distance, over three years ago—

Q. You mean you do not recall whether it was there or not?—A. No; I do not.

Q. You did not put the words there?—A. No; I did not.

Q. Was it done by your authority in any way?—A. No, sir; not at all. I knew nothing about it. That is, I had nothing to do with it.

Q. I have here two letters, marked 3 A and 5 A. Please look at them, and also at the indorsements on the back. Those indorsements

on the back are yours, are they?—A. [After examining the same.] Yes.

Mr. BLISS. I think the indorsement has been read.

Mr. MERRICK. Yes.

Q. Have you any recollection of these letters?—A. Only a general recollection. I receive on an average over thirty letters a day, and it is impossible for me at this date to tell.

Q. Is this Loup Valley, from Kearney up to Kent, in the vicinity of your residence?—A. It is about two hundred miles. We call that in the vicinity in a new country.

Q. Are you acquainted with that region?—A. Well, I am pretty well acquainted with Kearney. I am not acquainted with the other end of the route. I know generally through others. I have been on the river, but not at that point.

(Copies of maps showing route 34149 were submitted to counsel for the defendants and to the jury.)

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Now, Senator, Kearney is a place on the Union Pacific Railroad, is it not?—A. Yes, sir.

Q. Are there other railroads converging to that point from the south and southwest?—A. There is from the south and southeast.

Q. Southeast, I mean?—A. Yes; the road that once was called Saint Joe to Denver, connecting at Hastings, forty miles from Denver, with the Burlington road.

Q. Kearney is an important station?—Oh, yes; it is quite an important station.

Q. It is the point at which the railroad systems connect with the Union Pacific Railroad?—A. Oh, yes; it is a very important connection. It has connecting lines with the Burlington Railroad, the Chicago, Burlington and Quincy road.

Q. It is an exceedingly important line of railroad?—A. Oh, yes.

Q. And so, also, is the Union Pacific?—A. Both.

Q. What kind of a country is that above Kearney toward Loup City?

Mr. BLISS. I object. The Senator has already stated that he has never been there.

By Mr. WILSON:

Q. What do you know about that country?—A. As far as I have seen, it is good country; but I have never been as far up as the terminus of this line; I have been also from Kearney in that direction, but not as far.

Q. What, if anything, do you know in regard to the rapidity with which that country is settling up, and has been for the last five, or six, or seven years?—A. Well, we would call it rather a rapid settlement in that part of the country; it has been for four or five years at any rate.

Q. It has been growing rapidly in importance?—A. Oh, yes, sir; new counties are being organized there; a number of them have been organized in the last five or six years.

Q. Establishing courts and all that?—A. Oh, yes.

Q. Are new railroad lines being laid out through that country, Senator?

Mr. BLISS. I object. The question is put whether new railroad lines are now being laid out through that country.

Mr. INGERSOLL. That is only an evidence of the settlement that is going on.

Mr. BLISS. It is evidence of present settlement, but I do not think that concerns the making of an order four years ago.

Mr. INGERSOLL. I do not see how an order made four years ago touches this case.

By Mr. WILSON :

Q. Were there new railroad lines laid out three or four years ago ?—

A. I do not know that any were laid out, but they were what was called projected roads.

Q. I understood you to say in substance that as people went in there they were anxious for mail facilities and were making applications for them ?—A. Yes, sir ; I meant that to be general in our country, not only on that line, but on others. They were pretty anxious.

Q. It was a general thing when new settlers went in there that they were anxious to get mail facilities ?—A. Yes, sir.

Q. The mail service, as I understood you to say in your examination-in-chief, generally began with once a week, and then you increased it to two and three times, and up to a daily mail, as fast as you could ?—A. Yes, sir.

Q. I ask you to state whether the people were calling upon you from time to time to furnish them with these additional facilities.

Mr. BLISS. I object. It must be confined to applications for this region, to this line.

The COURT. I understood it was.

Mr. BLISS. The general question is not so, as I understand it.

The COURT. [To Mr. Wilson.] Your question relates to this particular district of country ?

Mr. WILSON. Yes, it relates to the district of country through which this line passes.

The COURT. [To Mr. Bliss.] I overrule your objection.

Mr. WILSON. I am not confining it to this route, but to this region of country where this route runs.

The COURT. I think, so far as it relates to the region of country through which the route runs, it is a proper question.

Mr. MERRICK. I have no objection, except I want to know for my own guidance hereafter in the examination of other witnesses. The word "region" is a somewhat indefinite term, and it may embrace a very large or a small tract of country. I have no objection to it for that matter.

The COURT. You may ask him, on re-examination, what he means by "region."

Mr. MERRICK. The testimony is in. Here is a certain route, this particular route, and it runs through three counties. It runs through Valley County, Sherman County, and Buffalo County, I think, and the word "region" had probably better be modified in accordance with geographical terms that have definite signification.

Mr. TOTTEN. Your honor, I want to state—

The COURT. [Interposing.] I shall spend no more time about it. [To Mr. Bliss.] I shall overrule your objection.

Mr. WILSON. Will the stenographer please repeat the question.

The stenographer repeated the question as follows :

Q. I ask you to state whether they were calling upon you from time to time to furnish them these additional facilities ?—A. I would have to say yes to that, because at that time that country was settling

up rather rapidly. Many years ago the Indians were in that country, and it was thought in those days, as we do now of a new country, that there was not much value about it. But afterwards we found out it was a fine part of the country, and when it once began to be settled the settlement went on rapidly, and these mail papers came in asking for the new mail facilities on new routes.

Q. And when these applications came to you, if I understand you, when you knew the parties themselves, then you indorsed their application and recommended the Post-Office Department to give them the facilities they were asking for?—A. Yes, sir; I think that is general with me. I do not know that I would make any exception in that course, because if I know the parties and believe them to be respectable people, as it has been the case with these, I do it. Now, there is one paper that I indorsed I see, as I do many others—that is, I see I referred it to the Post-Office Department. If you will notice, one of these is referred without any recommendation at all on my part. In that case I see I did not know the man who wrote the letter. But where I do know them, I usually indorse the paper and ask the department to grant the prayer of the petition.

Q. Now, Senator, where do these people coming into that country come from as a general rule, so far as you know?—A. From all parts of the country. I think that a very large percentage in the last two years have come from the Central and Eastern States into our country, although we are getting a very large immigration from the old countries, Germans or Scandinavians. But I think a large portion of these were from the United States.

Q. And from the Central and Eastern States?—A. And from the Central and Eastern States. We have a large percentage of that population.

Q. Do you know Messrs. Hale & Nightingale?—A. I know Mr. Hale.

Q. Are they reputable gentlemen?—A. They are so considered.

Q. I see he wrote a letter to you which has already been put in evidence, and which I need not again read—written by Hale & Nightingale—and on the back you have indorsed, “Respectfully referred to the Second Assistant Postmaster-General with the recommendation that the prayer of the petitioners be granted.” That is one of the cases where you happened to know the parties and indorsed what they stated?—A. Yes, sir; where I knew the party, and that they would not ask anything unreasonable.

Q. Have you any reason to suppose now that what they asked was not needed by that region of country with reference to which they made the application?

Mr. BLISS. [To Mr. Wilson.] Are you speaking of that letter?

Mr. WILSON. Yes.

A. I have no grounds for changing my mind about it at all.

Q. [Submitting the petition to the witness.] Now, I will show you this petition and ask you to look at the names on that petition.—A. [After looking at the petition.] Well, I see several names here of parties whom I know myself, but the larger number of them I do not know.

Q. You knew enough of them to make you feel justified in recommending the Post-Office Department to grant the prayer of that petition, did you?—A. Oh, yes. Two of these gentlemen are bankers, and one has been a State senator. I think he is an editor of a newspaper, now; but he was a State senator with us. So that I know several of

them as being gentlemen of prominence. I do not know a great number of them; but those whom I do know are reputable citizens.

Q. They are respectable and reputable gentlemen?—A. So far as I know; what I would say good, respectable gentlemen.

Q. And such gentlemen as you would be willing to rely upon in making application to the department for this service?—A. Oh, yes.

Q. Now, when you got your mails once a week, and were increasing it up to seven times a week in that country. if it took twenty-four, thirty-six, or forty-eight hours to carry that mail once a week, when you got it up to seven times did you think it ought to go on that same slow schedule; or when you talked about increased mail facilities, did you also have in consideration getting the mails more expeditiously than otherwise?—A. Well, I must say this: That in asking for the increased mail facilities I was generally governed by the time; that is, the number of times that it would run, leaving it to the department myself mainly what increased speed should be put upon it.

Q. You had no special reference to that?—A. No, I did not; our object is more particularly to get the mails to them.

Q. If you get a mail once a week and forty-eight hours, then if you increase it to seven times a week and forty-eight hours schedule, it would not be of much service, would it?—A. My understanding is that they generally increase the time as they increase the number of trips, to some extent; but I have but little to do with that part.

Q. That is, they decrease the time as they increase the trips?—A. Yes, sir.

Q. They go faster. If the country, in other words, developes, and if it makes seven trips a week necessary where one was necessary, then it equally makes it necessary to have the speed of the trips increased?

Mr. MERRICK. Wait a minute. He has not said that. The Senator has said nothing like it. He has said that he and they looked to the number of times the mail was to be carried, and not to the speed, but that it was the case when the number of times was increased, sometimes or generally, if you please, the speed was increased; not that the people wanted the speed increased. What the people wanted was expedition of trips; not expedition of time, which is very natural, and a question and a fact that will be plainly developed during this case.

The COURT. The counsel is just pursuing the inquiry for which he received a partial answer.

Mr. MERRICK. It is his examination-in-chief, for all we asked the Senator about was his indorsement of this petition. This is in reference to matters outside of what the Senator did with the petition. We only asked if he indorsed the petition, and what he did with the petition. Nothing else whatever.

The COURT. The petition related to an increased number of trips, and besides that there was an insertion in it in a different hand, of increase of expedition, and increase of time, or diminution of time; and that paper was referred by the Senator to the department for action. That paper related to an increased number of trips and to expedition, both.

Mr. BLISS. It does now, sir.

The COURT. It does now; I confess that; and it seems to me that this is a legitimate question within that limit.

Mr. WILSON. I want to say a word in reply to what Mr. Merrick has suggested, if your honor please.

The COURT. What is the use of making an argument when you have

the decision in your favor? Put the question, and let us have the answer, and go on.

Mr. WILSON. Will the stenographer please repeat the question?

[The stenographer repeated the question as follows:]

Q. If the country, in other words, develops, and if it makes seven trips a week necessary where one was necessary, then it equally makes it necessary to have the speed of the trip increased?—A. I do not know that it makes it necessary; but it is usually done.

The COURT. That is what he said before.

Q. [Resuming.] Now, Senator, when you go and ask the department to give you seven trips where there had been only one, and the one trip a week was, say, for forty-eight hours, would you not also ask for the expedition of the trips?

Mr. MERRICK. Wait a moment; I object. He is asking what the Senator would do; a different question from what the Senator has done.

Mr. BLISS. In this case.

Mr. MERRICK. In this case; yes.

Mr. WILSON. If your honor please, this is a question that has a broader significance and range, I submit, than the counsel for the prosecution are insisting it shall be limited to. Now, this case that we are dealing with has relation to the public affairs of the country in a most important particular. It has relation to that portion of the public service which conveys intelligence to the people, and aids them in their business. Now, it is perfectly preposterous, I submit—take the case I have alluded to—to say that they will increase, as the Senator says they ask to have the service increased, from one trip to seven trips, because of the influx of population and the growth of business, and when that original one trip was amply sufficient to carry it on a schedule of say forty-eight hours, when they run it up to seven trips a week you will see how absurd it is to be carrying a daily mail on a forty-eight-hours' schedule—on a two days' schedule. Now naturally it follows, as it seems to me, that when you increase the trips to accommodate the wants of the people, expedition follows as a necessary consequence; and I want to show by the Senator that when he would go to the Post-Office Department with an application of that kind he would not be satisfied for his people with simply getting them a repetition or a multiplication of trips, and giving them the old slow schedule that they had before. That was not what they wanted, and it is, as I submit, not in consonance with the very philosophy that lies at the bottom of this whole thing. And I want to show that when they went to the department for the purpose of getting this multiplication of trips, they also made their application for the expedition of time; that the one went along with the other.

Mr. BLISS. With reference to what may have occurred, your honor will bear in mind that our contention here is, and we propose to satisfy your honor and the jury of that fact that this petition, when signed, when forwarded to Washington, when presented to Senator Saunders, and by him handed back to an agent of the contractors, contained no words as to expedition in it; that between the time that Senator Saunders put his name upon the back of that paper and the time when it found its way on to the files of the department somebody inserted those words "13 hours schedule," after all this signing of the petition, and after the indorsement of the Senator had been made there, and that those words, "13 hours schedule," are the only words on any papers that can be found anywhere in the Post-Office Department asking an increase of speed upon this route. Bearing in mind, your honor, that

that is our position, the claim made here is to ask Senator Saunders whether, when he went to the Post-Office Department to recommend an increase of trips, he would not also, as a practice, recommend decrease of speed. Now, I submit that the practice of Senator Saunders cannot, by any possibility, be evidence in this case.

Mr. TOTTEN. If your honor please, I want to invite your attention to the language used in this petition outside of the words which the gentleman says were interpolated in that petition afterwards. Now, so far as this court is concerned, and so far as we are concerned, we know that petition, as shown to the jury, is legitimate from one end to the other. We have not had a word of proof on the subject of the alteration of that paper. All that we have is the bare statement of counsel, repeated and reiterated in the court a dozen times, that the language of this petition is for increased mail facilities. That does not mean an increase according to the technical sense of the word in the Post-Office Department. What do the people in Nebraska know about the difference between increase and expedition of a service on a given mail route? They do not know as much about it, your honor, as they do about the Sanskrit language. We have been talking to this court about it for two weeks, and your honor was a little dumbfounded about it yesterday, and did not understand it, as I looked at it.

The COURT. I did not understand the method by which the compensation was allowed.

Mr. BLISS. Increased mail service, increased to three trips it calls for.

Mr. TOTTEN. This is the language of the petition.

The country is being very rapidly settled up by people of intelligence, and we ask the increased mail facilities for the benefit of those who have already made their homes there, and for the purpose of inducing other people to come.

Now, when those people signed that petition talking about increased mail facilities they did not have reference to the Post-Office Regulations, because they do not know anything about the Post-Office Regulations.

Mr. BLISS. What I refer to precedes that.

Mr. MERRICK. It is below that.

Mr. TOTTEN. They say increased mail service, and I say that that means, in the technical language of the Post-Office Department, increase of expedition as well as increase of trip. Now, when these people send a petition to their Representative in Congress, and ask him to interpose for their advantage with the Postmaster-General, and ask him to get increased mail facilities, they do not refer to an increase of trips any more than they do to the rapidity of time, or the getting from one point to another. They meant increase of expedition as well as the number of trips. Now, it seems to me that that ought to dispose of the objection. And I want to suggest here, your honor, that we are cross-examining the witness. Our learned friends on the other side seem to be under the impression that they are defending somebody. We are the defending people here. They are prosecuting. They are examining witnesses in chief, and we are cross-examining their witnesses, and we are entitled to the largest possible liberty on that subject so long as we keep within the purview of the subject-matter under discussion. Now, I submit to the court that we have a right to ask any question which bears upon that particular post-route for our advantage.

Mr. MERRICK. I admit that.

Mr. TOTTEN. It is suggested to me that the learned Senator has testified so well on our side that they are afraid he is testifying as our witness.

Mr. BLISS. Will your honor allow me to call your attention to a misreading by the gentleman.

The COURT. The court is not called upon to interpret that petition.

Mr. BLISS. The asking part of this petition is that it is necessary that the service on said route should be increased from one trip to three trips per week to Loup City. That is what the petition asks for. It does not ask for mail facilities.

The COURT. I am not called upon to interpret that petition. The witness has testified as to the part he took in presenting that petition to the department, and whether that addition to the petition was in the paper at the time or not we have nothing to do with at present. I think the inquiry of the witness ought to be confined to his participation in regard to this particular petition.

Mr. TOTTEN. Your honor, it came out in the direct examination. The Senator told us all about the increase of population on the direct examination—not all about it, but we are trying to get out, in addition to what he said, all about it.

The COURT. That was brought out in the cross-examination.

Mr. MERRICK. I stuck to the petition.

Mr. TOTTEN. Mr. Saunders told us about the number of people——

The COURT. [Interposing.] You were inquiring about the rapidity of settlement in that country, and that subject was brought out on cross-examination.

Mr. TOTTEN. We are entitled to show that that is the usual manner of doing business, and the only way those people have to get themselves accommodated with mail facilities.

The COURT. It makes no matter so far as the present case is concerned what the habits of the Senator were at that time, or what the habits of the people were. The inquiry is as to what was done with these papers.

By Mr. WILSON:

Q. Do you know whether you transmitted this to the Post-Office Department through the mail or whether you handed it in person to the Postmaster-General—the petition seems to be addressed to the Postmaster-General—or whether you gave it to somebody else?—A. I could not say as to this particular petition, because sometimes I have more frequently than otherwise to send them through the mail; we have a carrier from the Senate who carries our mail matter to the heads of departments, and most of them go in that way, though sometimes I have gone in person to the department, and generally to the Second Assistant Postmaster-General.

Q. Do you remember whether you went to them in person about this particular route?—A. I could not tell.

Q. You could not remember?—A. No; I cannot.

Q. You have no recollection about it?—A. I do not recollect enough about it to state?

Q. You have a large number of correspondents?—A. Yes, sir.

Q. And a great accumulation of papers on your hands?—A. Yes, sir; and a great many of them on the subject of mail; first to get mail routes, and then to get them increased in number and sometimes in the hours, too, or to lessen the hours.

Q. You are getting petitions for increase of trips, and also for expedition of service; that is to say, the reduction of the time of carrying?—A. Yes, sir; most of them relate, as I understand them, to increased number of times they should be carried; but sometimes they *do the other*.

Q. Now, then, can you separate this particular petition from the other numerous petitions you have received so as to state anything distinctly with regard to this particular one?—A. No; I cannot, because I had no thought of ever hearing of it again, but thought that it would be attended to by the department. And of course, I fastened nothing on my mind in regard to this more than to any other one. It was never thought of by me only in a general way. I say in a general way, because they have been asking for a good many routes from that same point; that is, from Kearney, in different directions, to other and important points.

Q. Do you recollect what the population of Kearney was, say, three years ago?—A. Well, I think they have now somewhere about two thousand five hundred or three thousand people there, and they had about half that number then, probably.

Q. Your attention has been called to these words, "Schedule, 13 hours" in this petition. You say that those words were not in there when you indorsed it?—A. No; I do not say that.

Q. You do not know whether they were or were not?—A. I could not tell. It is not common for petitions of that kind to be received by me in the same condition that that is in, and it would look to me that I ought to have remembered more about it, but it was three years ago, and I could not say whether it was in there or not. It evidently ought to have attracted my attention.

Q. Of course you do not know, then, whether the words were in there or not when it went to the Postmaster-General or to the Post-Office Department?—A. No; I would not say.

Q. And when it was acted upon by the Post-Office Department; you do not know anything about that?—A. No.

Q. Who represented the State of Nebraska in the House of Representatives?—A. The present member, Mr. Valentine.

Q. And the gentleman to whom one of these letters is addressed, I suppose?

Mr. MERRICK. He has not seen that letter.

Mr. WILSON. Let me have it, Mr. Merrick. [Letter submitted to Mr. Wilson and by him submitted to witness.]

A. [After looking at the letter.] Yes, sir; E. K. Valentine.

Q. He is a member of Congress from Nebraska?—A. Yes, sir.

Q. Do you know Mr. Seaman who writes this letter?—A. I do not recollect Mr. Seaman, hence you discover that I indorsed it differently from the others.

Q. You do not know a grain and agricultural implement dealer out there by that name?—A. I do know the name, but I do not know enough about him to say anything.

Q. It seems he had written to both you and Mr. Valentine on the subject. That valley, or that region of country between Kearney and Kent, is an agricultural region I believe?—A. Yes, sir.

Q. Do you know whether you got this petition by mail or not?—A. I could not tell, but I get most of them that way. Sometimes they are brought here by parties, but I think if this had been brought here by anybody, I would have called to mind more about the circumstances concerning it; therefore, I think it came by mail.

Q. You think it came by mail?—A. Yes; I would think so.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. Please look at the date of your indorsement, February 26, and at this date, April 3, and, assuming that that was the date it was received at the department, what is now your best recollection as to whether you forwarded that to the department or whether you handed it back?

Mr. CARPENTER. He has already answered the question.

A. I answered that by saying that I could not tell now at this distance of time what course it did take. Sometimes they went one way and sometimes another. Sometimes parties bring them to me and get an indorsement, and in that case they take possession of them. At other times, and most frequently, I indorse them and send them through the mail.

Q. You were asked about railroads being projected. Were there any railroads north of Kearney in 1878 and 1879?—A. There were no roads being built at that time.

Q. That is what I mean; none existing?—A. None being built. They were talked of.

Q. Are there railroads being now built north of Kearney?—A. I could not answer that. I would say very likely, because they have been making arrangements to start a road, and I expect they have, but it is lately.

Q. You said you had been north of Kearney, up this valley. How far?—A. Well, about twenty or thirty miles, say, probably.

Q. You never have been at Loup City?—A. No, sir.

Q. Do you know the population of Loup City?—A. I was in that country before there was any Loup City. I was down in sight of it. I did not go to it.

Q. Do you know the population of Loup City?—A. No, sir; I do not know the population. It is growing, though.

Q. It is smaller than Kearney?—A. Oh, yes; it is smaller.

Q. Do you know the population of Kent?—A. No; I do not know the population of any of those places. I have been away from there five years now, and my only knowledge would be by writing.

CHARLES H. FRENCH sworn and examined.

By Mr. MERRICK:

Question. State to the court and jury your name.—Answer. My name is Charles H. French.

Q. Where do you live?—A. I live in Loup City, Sherman County, Nebr.

Q. What is your business?—A. I am a United States mail contractor and subcontractor.

The COURT. You reside in Loup City?

The WITNESS. Yes, sir.

Q. [Resuming.] Were you in any way connected with the route from Kent to Kearney?—A. I was.

Q. When did you first become connected with that route?—A. I made a subcontract for that route on the 5th of June, 1878.

Q. With whom did you make that subcontract?—A. A man—

Mr. WILSON. [Interposing.] I object, if your honor please. [After a short pause.] Oh, you are simply asking with whom he made it. Never mind. I beg pardon.

The COURT. The objection is withdrawn. Proceed.

A. I made it with John M. Peck for a man by the name of J. W. Dorsey, as his attorney.

Q. You made it with John M. Peck by John W. Dorsey, as his attorney?—A. That is it, sir.

Q. Was that contract in writing?—A. Yes, sir.

Q. What did you do with it?—A. I kept it until last February.

Q. What did you do with it then?—A. I had it put on file in the Post-Office Department.

Mr. TOTTEN. He says he had it put on file. I wonder how he knows that?

Mr. WILSON. If your honor please, last February was long since my client had anything to do with the Post-Office Department.

The COURT. This only relates to the time when he put it on record.

Mr. WILSON. Very well.

By Mr. MERRICK:

Q. [Resuming and submitting a paper to the witness.] Look at that paper and state whether or not that is the paper to which you refer.—

A. [After examining the same.] Yes, sir; that is the paper.

Mr. WILSON. Will you let us see it?

[The paper was submitted by Mr. Merrick to Mr. Wilson.]

Mr. MERRICK. I offered yesterday the subcontract from the Post-Office Department contained in the jacket which I hold in my hand, with other papers, and withdrew it upon some suggestions from the other side. I now renew the offer.

The COURT. That is this contract?

Mr. MERRICK. This contract.

Mr. WILSON. I object to it, for the reason that the witness now testifies that the paper was filed in the Post-Office Department last February—February, 1882, a paper that my client never saw and could not have seen as the testimony now discloses. And I object to it now, for the further reason that that is not the original contract paper which Mr. Merrick had. It is a copy, and not a copy certified to according to requirement of law.

Mr. MERRICK. How do you know it is a copy?

Mr. WILSON. Why, that is what was conceded yesterday.

Mr. MERRICK. No, it was not conceded yesterday.

Mr. WILSON. Well, it is a copy.

Mr. MERRICK. I do not know whether it is a copy or not. The witness can look at it.

The COURT. Let us see what it is.

By Mr. MERRICK:

Q. Look at the signatures and state whether those signatures are yours or not?—A. This is a copy of the original contract with Mr. Dorsey, and it is certified by R. M. Grimes, the postmaster.

Q. Where is the original contract?—A. Mr. John W. Dorsey took it with him.

Q. Was that made at the same time?—A. It was made at the same time that the other was made, one as an original and the other as a duplicate.

The COURT. Well, there is a difference between a copy and a duplicate.

Mr. MERRICK. He does not know that difference.

By the COURT:

Q. Is that signed by the parties to it?—A. No, sir, this is not signed by the parties. It is signed by the postmaster.

Mr. CARPENTER. The postmaster certifies to the sureties simply. He does not certify that it is a copy of the contract.

By Mr. MERRICK:

Q. [Resuming.] When was that copy made?—A. It was made on the 5th of June, 1878.

Q. When was the original contract made?—A. On the 5th of June, 1878.

Q. Was that written at the same time?—A. It was; this is claimed right here on the face as a duplicate.

Mr. MERRICK. Your honor will see upon looking at that law, and I see your honor is now looking at it—I will call your attention to it. There is a law of Congress, and then added at the bottom of it is a regulation of the department. You will find it in the last paragraph under that law; it is simply for their guidance. A party has a right to file a copy of his subcontract in the Post-Office Department, and the Post-Office Department may refuse to act on it if it is not certified.

The COURT. The regulations require that the subcontract filed must be certified to be a true copy of the original by the postmaster.

Mr. MERRICK. That is the regulation.

Mr. WILSON. And the regulation has the force of law by statute.

The COURT. Let us see the paper now.

Mr. MERRICK. I want to ask another question, if your honor will allow me.

Q. [Resuming.] That was made at the same time with the original?—A. It was.

Q. And at the same time you executed the original?—A. It was.

Q. Who wrote those names?—A. Mr. John W. Dorsey.

Q. Mr. John W. Dorsey wrote all of those names?—A. He wrote all of those names on this one.

Q. And you were by, authorizing it to be done?—A. Yes, sir.

The COURT. You say John W. Dorsey wrote these names on this paper?

The WITNESS. Yes, sir.

Mr. CARPENTER. It is a copy of the other.

Mr. MERRICK. Very much of a copy when the parties were by, authorizing it to be written.

Mr. CARPENTER. Your witness swears it was a copy.

Mr. MERRICK. My witness does not know as much law as you do.

Mr. HENKLE. I object, upon the ground that a foundation has not been laid for the introduction of that contract, and I call your honor's attention to page 146 of the Post-Office Laws and Regulations.

Mr. MERRICK. Of what year?

Mr. HENKLE. The one I hold in my hand.

Mr. MERRICK. Is it 1879 or 1873?

Mr. HENKLE. 1879.

Mr. MERRICK. What page do you say?

Mr. HENKLE. Page 146, section 624. It is a citation from the statute of May 17, 1878.

Hereafter no subletting or transfer of any mail contracts shall be permitted without the consent in writing of the Postmaster-General; and whenever it shall come to the knowledge of the Postmaster-General that any contractor has sublet or transferred his contract, except with the consent of the Postmaster-General as aforesaid, the same shall be considered as violated, and the service may be again advertised as herein pro-

vided for; and the contractor and his securities shall be liable on their bond to the United States for any damage resulting to the United States in the premises.

Mr. MERRICK. What is the date of that contract, Judge Wilson?

Mr. WILSON. It is dated the 5th of June, 1878.

Mr. HENKLE. And the act of Congress is the 17th of May, 1878.

Mr. MERRICK. That act don't affect this. That was made for the protection of the department.

Mr. TOTTEN. Your honor, there was no authority for anybody to make a subcontract prior to May 17, 1878, and this contract, to be valid in the Post-Office Department, must be filed according to the statute and the regulation. Now, how can the Postmaster-General know whether a paper is a copy of the contract unless it is properly certified to by one of his subordinates. That paper is not. So that your honor can readily see that if we are to let a paper in because it happens to be found filed in the Post-Office Department, it must bring with it all the evidences of verity that the rules and regulations of the department require. Now, there is nothing said as to how the Postmaster-General shall know by this statute that there is a copy of a contract unless he has some authority, and he has filled that vacancy in the law, or that omission, by making a regulation that the postmaster at the place shall make a certificate that it is a copy of the original contract. Now, my brother Merrick seeks to show that this copy was made by Mr. Dorsey himself. Now, it is a subletting by Mr. Peck to Mr. French. It purports to have been made by Mr. Dorsey upon the face of the paper, and it is an instrument under seal. Now, I say that John W. Dorsey cannot sign the name of John M. Peck, or could not, to a sealed instrument without having a power of attorney, under seal, of the same dignity with that paper. So that under all considerations that kind of a paper is not proper evidence. Your honor ruled it out last night.

Mr. MERRICK. No, his honor did not rule it out.

The COURT. We are not trying the title of the parties to this route. If we were trying the title to the route, Dorsey's power of attorney from Peck would be produced, or this subcontract would be void. The question is now as to the connection that Dorsey had in the contracts relating to this route with Peck, the contractor. Now, whether this paper be regular or irregular, the witness has proved that the paper was made out by John W. Dorsey, one of the defendants. The contractor is John M. Peck. We haven't the power of attorney from Peck to Dorsey to sign this paper, but we have had proved the act of Dorsey in connection with the contract relating to this route, and it is charged in the indictment that there was a connection or an association in interest between Peck and Dorsey and others in these routes.

Mr. TOTTEN. Your honor, it is dated June 5th 1878, nearly a year before this alleged combination took place.

The COURT. But it covers the whole period of the contract, and the combination may have pre-existed the date alleged in the indictment.

Mr. TOTTEN. That paper, your honor, shows upon the face of it that Mr. Dorsey did not have an interest in it. It shows that Peck did, and he was simply performing an agent's duty.

The COURT. As the paper comes from the department, and as the witness has proved that Dorsey executed this paper, although it is only a copy, and as it relates to the route in question, I will admit the paper for the present.

Mr. HENKLE. We except, your honor.

Mr. CARPENTER. We all except to that.

The COURT. Yes; so far as Dorsey is concerned, it is an original act.

Mr. MERRICK. It is an original act of Dorsey's. [Referring to paper in his hands.] This is a contract made by John M. Peck, by John W. Dorsey, his attorney, with C. H. French, to carry the mail on route 34149, from Kearney to Kent, and bears date the 5th day of June, 1878, it provides, among other things, for payment to French, as follows:

"One round trip per week, \$700; two round trips per week, \$1,300; three round trips per week, \$1,800; six round trips per week, \$3,300." And the further provision for payment, that "in case said service is expedited that the party of the first part shall pay to the party of the second part 65 per centum of the amount received by the said party of the first part from the Post-Office Department on account of said expedition, in addition to the sums hereinbefore agreed to be paid." This paper was marked on yesterday before it was withdrawn.

The COURT. Mark it over again to-day. The mark of yesterday was erased, I suppose.

Mr. MERRICK. No, it was not erased.

The CLERK. It was marked 10 A.

The COURT. You had better mark it as of to-day, and erase the mark of yesterday.

Mr. WILSON. [To the clerk.] Mark it and let me see it.

[The paper was marked by the clerk 16 A and submitted to Mr. Wilson.]

By Mr. MERRICK:

Q. [Resuming.] Did you enter upon the work of carrying the mail between Kearney and Kent under that contract?—A. I did.

Q. How long did you carry it under that contract?—A. I have carried it from the 1st day of July, 1878, until the present time. I am carrying it yet.

Q. Under that contract?—A. Yes, sir.

Q. How long did your pay of \$700 per annum continue?

Mr. TOTTEN. If the court please, I object to that question. In the first place it has nothing in the world to do with this case, and in the next place if there was any increased pay the records will show it, and we want to see them. This man cannot get pay, except through the Treasury Department, and whatever he got is a matter of record, and whatever the principal in the contract got is also a matter of record.

The COURT. It does not follow that he received his pay from the Treasury at all.

Mr. TOTTEN. The subcontract is on file. He must have got it there.

The COURT. It has only been put on file lately. I do not know what he may say about it.

Mr. MERRICK. I will withdraw that question for the present.

Q. [By Mr. MERRICK.] When did you put that contract on file?—A. Sometime in February last.

Q. Why did you not file it before?

Mr. HINE. I object to that question. Now, if Mr. Merrick insists that a party can give a reason, give his own conclusion, instead of stating facts why he did not do anything——

The COURT. [Interposing.] It seems to me, Mr. Merrick, that that is not a question you ought to ask.

By Mr. MERRICK:

Q. [Resuming.] At the time this original contract was made, and this copy was made, and you gave the original contract to John W. Dorsey,

was there anything said about putting this on file ?—A. Yes, sir ; there was.

Q. What was it ?

Mr. WILSON. Now, if your honor please, that brings us right back to the point——

The COURT. [Interposing.] It is the act of Dorsey.

Mr. MERRICK. It is the act of Dorsey at the time of making the contract.

The COURT. He can answer the question.

Mr. MERRICK. Go on ; what was said ?

A. Mr. Dorsey told me I did not have to put my contract on file ; that I would get my pay from him or from John M. Peck ; I always got my pay, and never thought anything more about it.

Q. How long did you continue to receive \$700 ?

Mr. INGERSOLL. Well, now—well, go on. I do not see what that has got to do with this case, though.

Mr. TOTTEN. He is adjusting the equities between Dorsey and French. He might as well do that.

Mr. MERRICK. Counsel will find out what I am doing.

The COURT. We do not want any more arguments.

Mr. MERRICK. I do not pretend to answer their arguments.

By Mr. MERRICK :

Q. How long did you continue to receive \$700 ?—A. Until the 1st of August, 1879.

Q. What have you received since ? What has been the amount of pay per annum that you have received since the 1st of August, 1879 ?—

A. One thousand five hundred and eighty-seven dollars and forty cents, I believe.

Q. Per annum ?—A. Yes, sir.

Q. Your contract called for \$1,300 for two trips, and \$1,800 for three ?

—A. I did not make the three clear trips.

Q. You only made the three trips from Kearney to Loup City ?—A. That was all.

Q. The rest was on how many trips ?—A. One trip.

Q. Who made those payments to you ?—A. I always received pay from John R. Miner, as agent.

Q. Dorsey made the contract with you as Peck's attorney, and Miner paid you ?—A. Yes, sir.

Q. Did you receive any more than fifteen hundred dollars and some cents ?—A. No, sir.

Q. That was all ?—A. That was all I received.

Q. On what time were you carrying the mail from Kearney to Loup City, when you first commenced this work in 1878 ?—A. I generally went through in one day.

Q. From Kearney to Kent or Kearney to Loup City ?—A. From Kearney to Loup City.

Q. Have you ever changed the time from Kearney to Loup City ?—

A. No, sir ; I have supplied one office betwixt Kearney and Loup City by a side supply.

Q. You went through from Kearney to Loup City in twenty-four hours ?—A. In twelve hours.

Q. You went through from Kearney to Loup City in twelve hours in 1878 ?—A. Yes, sir.

Q. And continued to go through in twelve hours from that time, and have never changed that time ?—A. Never changed it from Kearney to Loup City as I have traveled it.

Q. It is the same now as it was when you began ?—A. Yes, sir.

By the COURT :

Q. Allow me to ask you a question. On the map before me, Loup City appears to be about midway between Kearney and Kent.—A. It is forty-eight miles from Kearney and fifty-four miles, I think, from Kent, that is, taking the way I have traveled it; but I have had to make a side supply of sixteen miles.

By Mr. MERRICK :

Q. For what office was that ?—A. Cedarville.

Mr. MERRICK. It is all figured out on the map.

The COURT. I see the distances are marked.

By the COURT :

Q. It is forty-eight miles from Kearney to Loup City, and on that route you say the trips have not been increased, nor has the speed been increased ?—A. No; I said the trips have been increased to three trips a week from Kearney to Loup City, and no increase at all from Kearney to Kent.

By Mr. MERRICK :

Q. How about the time from Kearney to Loup City ? That is what the court wants to know.—A. The time I have always gone through, in fair weather, when the roads were good, is about ten to twelve hours; forty-eight miles.

Q. Were you ever directed to expedite your time from Kearney to Loup City ?—A. No, sir.

Q. Have you ever received 60 per cent—

The COURT. [Correcting.] Sixty-five.

Q. [Continuing]—sixty-five per cent. for expedition ?—A. No, sir.

Mr. HENKLE. What has that to do with this case ?

Mr. TOTTEN. Yes; I would like to know that. If he has not received it he had better sue Mr. Dorsey in a civil court.

Mr. MERRICK. Let the gentleman object. I think the shortest way is to object.

The COURT. We will go through this investigation. I overrule the objection.

Mr. HENKLE. We would like an exception noted.

The COURT. Yes.

[The exception is accordingly here noted.]

Q. Was Fitzalon ordered to be taken into the route; were you directed to take it in ?—A. It was right on the same route when I commenced in 1878.

Q. Did taking in Fitzalon—

Mr. HENKLE. [Interposing.] I want to call your attention to the fact that your questions are very leading. He is your own witness.

The COURT. It seems to me the question is not objectionable when he asks whether Fitzalon was on the original route or not, because the answer is not suggested by the question.

Mr. HENKLE. I am not objecting to that particular question; but the forms of almost all the questions are leading.

Mr. MERRICK. It is a mere matter of form. It is not anything where the witness can be led into—

The COURT. [Interposing.] When there is an objection to a particular question as not in proper form, the court will, of course, entertain it.

Mr. HENKLE. I make the suggestion rather to brother Merrick himself

Mr. MERRICK. I will endeavor to conform to the rule.

Mr. HINE. I desire to make this suggestion: When Mr. Brewer was on the stand yesterday, and had the table of distances before him, I called attention to Fitzalon; and I understood Mr. Merrick to say that they claimed nothing on the ground of Fitzalon not adding to the distance or the trips. I did not attempt to pursue that line of inquiry because of Mr. Merrick's statement.

Mr. MERRICK. I told him I did not think I was going to make any point on Fitzalon, and I am not going to press it as a point in the case, for the reason, as I stated at the time, that it was too small a point among so many great and important ones. It is on the notes handed to me, and I will prove it as I go along. It is an available point; but I do not want to take small ones, inasmuch as I can secure big ones.

Q. Did Fitzalon add anything to the distance?—**A.** Not as I traveled it.

Q. You traveled by the road?—**A.** Yes, sir; I traveled by the road.

Q. How as to Cedarville?—**A.** Well, I do not know as I understand what you mean about that.

Q. Did that add anything?—**A.** It did.

Q. How many men and horses did you use on that route when you commenced and have you used generally?

Mr. TOTTEN. We want to object to that every time it comes up. We want to have a combination proved first or some testimony submitted on that subject. This is another question as to the discretion of an official in the Post-Office Department. If the statute authorizes the expedition it clothes the Postmaster-General with power to dispose of that question; and his action cannot be reviewed or revised by this or any other court. Now, this is not the body about which this conspiracy took place. Your honor was trying to find out yesterday what we had in the Post-Office Department, in order to ascertain what there was to conspire and combine about. This was not in the Post-Office Department. This was an act done by two men, the present witness and Mr. Dorsey, in the State of Nebraska. My clients were not there; Mr. Hine's clients were not there. There was nobody there except Dorsey and this witness. Now, it was an act not done in our presence or by anybody acting for us directly or indirectly; and I submit the matter to the court, because it is coming up at every stage of the case that where the statute lodges power in a public officer to ascertain what the facts are according to the best manner within his reach, and he passes upon that testimony, imperfect though it be, incorrect though his judgment may be, it is not in the power of any other tribunal to revise the exercise of that discretion.

The COURT. I thought the court had decided that question at an early stage of these proceedings. There is no officer of this Government above the law.

Mr. TOTTEN. That was not my point.

The COURT. Although an officer of the Government may have discretion, if he uses the discretion corruptly he is responsible to the law.

Mr. TOTTEN. Your honor misunderstands us entirely on that subject. We are not saying that any public officer is above the law. We have never said that, and have never intimated that, and do not.

The COURT. You only mean to say that the law places a public officer above the responsibility that belongs to other men.

Mr. TOTTEN. No; we concede that if he did it corruptly, if he took a bribe to exercise the powers reposed in him by the statute, that is another thing. We want to have some kind of testimony on that subject.

They have got to prove that. They cannot go on and prove the other things first. We are beginning at the top of the house. We have no proof here at all of the conspiracy.

The COURT. I have seen many houses underpinned, and very effectually, too. Sometimes that is done.

Mr. TOTTEN. They were underpinned after they had been built, your honor. You never saw a man begin at the top of a chimney to build a house. That is what my learned friend was doing here.

The COURT. I do not know whether this is the top of the chimney or not, but it seems to me that it is not only competent but important in relation to the issue involved in these proceedings. You can have your exception.

Mr. MERRICK. I wanted to say something to the court which possibly might arrest a repetition of these interruptions.

The COURT. Oh, well, you cannot do that.

Mr. MERRICK. Then I must be silent.

Mr. TOTTEN. Brother Merrick will have a good time stopping us.

Mr. MERRICK. I hoped to do so by presenting such law to the consideration of counsel as would induce them to stop, out of respect for the authority.

The COURT. We have gone over this same question several times. Proceed, Mr. Merrick.

Mr. MERRICK. Will the stenographer please repeat the question?

[The reporter repeated the question as follows:]

Q. How many men and how many horses did you use on that route when you commenced and have you used generally?

Mr. MERRICK. Between Kearney and Loup City.

Mr. WILSON. I simply want to say, if your honor please, that there is nothing in this indictment as to the number of men and horses on this route.

The COURT. They are not trying now to prove overt acts in pursuance of the conspiracy. They are trying now, as I understand it, to make out the charge of conspiracy. In that department of the case they are not bound by any allegation or want of allegation in the indictment. The charge of conspiracy is made there at a certain time and place, and between certain parties. Whatever may tend to prove the conspiracy is competent evidence in my opinion.

Mr. WILSON. Then I have been laboring under a misapprehension. I thought yesterday testimony of this character was admitted upon the ground that it was for the purpose of showing that there was something to conspire about, but that it was not introduced for the purpose of proving the conspiracy. They are attempting, if I understand it now, to prove the conspiracy by proving what one man did and what another man did when the remainder of the defendants were not anywhere about.

The COURT. The testimony now proposed to be offered may have a double effect.

Mr. MERRICK. I am pursuing the strict rule of law as I understand it, and following it out carefully with the authorities before me.

The COURT. It is the strict rule as far as this case is concerned, at any rate.

Q. How many men and animals did you use on this route?

The WITNESS. From Kearney to Loup City?

Mr. MERRICK. For the whole route.

A. The whole of it in the first place was five horses and two men.

Q. From Kearney to Kent?—A. Yes, sir.

Q. From Kearney to Kent five horses and two men?—A. Yes, sir.

Q. How many did you use from Loup City to Kearney?—A. Three horses and one man.

Q. Did you, during the time you were running that route, add to your number of horses or to your number of men?

The WITNESS. When I was running once a week?

Q. You were using those when you were running once a week?—A. Yes, sir.

Q. Did you add to that number; and, if so, when and why?—A. I added to that number in August, 1879. I took then ten horses and three men.

Q. Why?—A. Because it took six horses to run from Kearney to Loup City; and it took two horses to go to Cedarville.

Q. Why did you have to add to your number of horses; because of new trips?—A. Because there were more trips.

Q. How many trips at that time did you make?—A. Three trips from Kearney to Cedarville, and one to Kent.

Q. One from Loup City to Kent?—A. Yes, sir.

Q. And on account of this increase of trips you went up to how many horses?—A. Ten horses.

Q. And how many men?—A. Three men.

The COURT. He says two horses were necessary to make the trip from Loup City to Cedarville. That was a by-road.

Mr. MERRICK. That was a by-road. That is what I am coming to.

The COURT. Two of these ten.

Q. Leaving out Cedarville, how many horses and how many men would it have been necessary for you to have added to your original number in order to make the three trips?

The WITNESS. In order to make the three trips to Kearney?

Mr. MERRICK. Three trips from Kearney to Loup City, leaving out Cedarville.

A. It would have been necessary to put on two horses more.

Q. That would have made seven horses?—A. I used part of the first horses to go to Cedarville and part to go to Kent. It took five in all. In running the mail business after it was three trips a week it took ten horses and three men.

Q. Did you add those horses and men because of the necessity for you to go faster between Kearney and Loup City?—A. No, sir.

Mr. TOTTEN. That is undoubtedly a leading question.

The COURT. No; I do not think that is a leading question. A leading question is one which suggests to the witness the character of the answer he is to make.

Mr. TOTTEN. He says, "Did it require so many men and so many horses?"

The COURT. No; he inquired whether it required more men and horses.

Mr. MERRICK. Because of the expedition.

The COURT. Because of the expedition, than was used, in consequence of the increase of service.

Mr. TOTTEN. Perhaps I misunderstood the question.

The COURT. The question did not suggest the answer.

Mr. TOTTEN. Let us have it read.

[The reporter read the question as follows:]

Q. Did you add any of those horses and men because of the necessity for you to go faster between Kearney and Loup City?

The COURT. I think it is admissible.

Mr. HINE. Allow me to enter an objection, because it is leading.

Mr. MERRICK. I will withdraw the question and stop the objections.

Q. Why did you increase your number of horses?

Mr. HINE. I object to the question.

The COURT. I overrule the objection.

Mr. MERRICK. I mean from the number you had when you were running one trip a week.

Mr. HINE. Allow me to enter the objection that he cannot ask the witness to state a conclusion of law and fact both.

The COURT. [To the reporter.] Note the objection on behalf of Mr. Vaile.

[The objection is accordingly here noted.]

Q. What fact was there that made it necessary for you to increase the number of your horses and men?

Mr. HINE. I repeat the objection even to that question.

The COURT. I overrule the objection.

A. The fact was, I had to go three trips instead of one, and it took more horses and more men to do it.

Q. Was there any other fact?—A. There was none.

Q. [Submitting petition marked 1 A to the witness.] Did you ever see that paper before?—A. Yes, sir; I have.

Q. When?—A. I saw this paper some time in the winter of 1878-'79.

Q. How did you come to see it?—A. I helped to get it up; helped to circulate it; that is one way I came to see it.

Q. Who gave you any instructions in regard to a petition upon that route?—A. I had a petition sent me from John M. Peck, wrote out, that this is an exact copy of. In taking it to a friend of mine, an attorney, to have some advice on it, we upset an ink bottle and spilled ink on the other petition that was sent me, and he wrote out a copy of the first one.

Q. Who wrote the copy?—A. Mr. T. S. Nightingale.

Q. Mr. Nightingale wrote this copy from the original sent to you by Peck?—A. He did.

Q. State again why it was that the original was not used. I did not clearly understand you.—A. He spilled a bottle of ink on it, and so defaced it that we could not read it, and thought we had better write a new one.

Q. Do you know in whose handwriting the original was?—A. I do not know that I could swear whose it was, but it was the same handwriting that they always wrote letters to me in answer to those I sent to lock-box 714—signed by John R. Miner.

Q. After this petition was signed, who took charge of it?—A. Mr. Nightingale.

Q. How came he to have charge of it when it had been sent to you?—A. Because I did not like to send it off. I did not like to have the people know I was trying to get it up.

Q. What reason was there for your not liking the people to know?

Mr. HINE. I object to the question.

The COURT. It is objectionable.

Q. You gave it to Nightingale?—A. I did.

Q. To send it off?—A. Yes, sir; that is, after it had been circulated.

Q. Do you know of your own knowledge to whom Nightingale sent it?—A. I know who he was instructed to send it to.

Q. Did you give it to him after it was all signed or before?—A. In the first place it was signed at Loup City, and along the route, and then it was taken to Kearney; and after the people in Kearney had signed

it it was taken back to Loup City, and then it was presented to Mr. Nightingale, and he sent it.

Q. Sent it wherever it went?—A. Wherever it went.

Q. Were those words, "Schedule, 13 hours," in that petition when you circulated it?—A. No, sir.

Q. Were they in that petition when you gave it to Nightingale?—A. No, sir.

Q. Are you positive about that?—A. I am positive. I suppose I read that petition over about a dozen times to different parties.

Q. Before I go on with this particular line of inquiry, I wish to ask a question that I had forgotten. You said you never received more than fifteen hundred and odd dollars a year?—A. Fifteen hundred and eighty and some odd dollars.

Q. Was that amount ever diminished by fines or otherwise?—A. It was in two particular quarters, in the winter of 1880-'81. There was two quarters of the pay that there was fines imposed on. That was all it was ever diminished. [Correcting himself.] No; there was a certain office cut off that there was a small deduction made for; I do not just remember how much.

Q. Did you know what you were fined for?—A. No, sir; I did not.

Q. Do you know now?—A. Yes.

Q. What?

Mr. HINE. Wait a moment. The records of the department will speak for themselves. If it was learned from either Vaile or Miner I have no objection to his testifying; otherwise I have.

The COURT. The record of the department might not show it.

Mr. MERRICK. He may be wrong. I ask him if he knows?

The COURT. That is the reason I think the question may be put.

Q. What do you know about it?—A. I got a statement from the Post-Office Department stating that I was fined——

Mr. TOTTEN. [Objecting.] No, no. He cannot tell what the statement was, your honor.

The COURT. No.

Mr. MERRICK. That I do not ask.

Mr. TOTTEN. Let us have the statement.

Mr. MERRICK. Where is that statement?

The WITNESS. I was fined for late arrivals——

Mr. MERRICK. [Interposing.] Wait a moment; where is the statement?

Mr. HINE. He wants to state it so badly, that perhaps you had better let him.

Mr. MERRICK. The imputation that he wants to state it is very unjust.

Mr. HINE. Not at all.

The COURT. If they withdraw the objection he may state; but if they insist upon it, he cannot.

Mr. TOTTEN. We do not withdraw it.

Mr. MERRICK. The witness does not want to state anything. I never saw a fairer witness on the stand in my life.

Mr. TOTTEN. Oh, no.

Mr. MERRICK. You cannot make imputations against my witnesses without having me repel them. I will not allow it. I have had enough of these aggressive movements from the other side.

Mr. TOTTEN. If there have been any aggressive movements they have come from that side.

Mr. MERRICK. Not at all. Patience has almost ceased to be a virtue.

The COURT. Oh, well; we are just entering on the trial. If patience is giving out now, we will have a bad time of it. We must keep order and possess our souls in patience.

Mr. TOTTEN. We have not lost patience on our side, your honor. Ours is inexhaustible.

The COURT. Yes.

Mr. MCSWEENEY. We are like your honor.

Q. At the time of the making of your contract, was any reason given to you by Mr. Dorsey for making a sliding scale of pay?

Mr. WILSON. Now, if your honor please——

The COURT. [Interposing.] We are getting toward the conspiracy question now.

The WITNESS. Let me understand what you mean by a sliding scale.

Mr. MERRICK. For instance, one trip per week, \$700; three trips per week, \$1,800; six trips per week, \$3,300.

A. I do not know as I can say there was anything said in regard to why that was done. That was the best offer he would make me. It was hard times out there, and we had to do almost anything.

Q. Was anything said about 65 per cent. in case of increase?—A. Yes, sir.

Q. What as it?

Mr. TOTTEN. Is that competent, your honor?

Mr. MERRICK. At the time of making the contract.

The COURT. I do not see the bearing of it.

Mr. MERRICK. The object is to show this: That at the time the contract was taken from the department, and the subcontract made with this carrier, an increase was contemplated, and a prospect of an increase, and the promise of an increase was held out as part of the consideration of the contract. It shows that when these contracts were taken they were taken with a view of an increase; and I expect to follow that up in other cases by showing that they had good ground to believe and to know that they would be increased, and that was the reason why, in some of the cases, they took contracts at certain amounts and paid the subcontractor almost twice the amount in the first instance before the increase was made.

The COURT. We are all satisfied about that. This country was growing rapidly, and of course a man that took a contract expected to have an increase. Senator Saunders remarked here this morning that contracts were taken in that way. That is as the law contemplated it.

Mr. TOTTEN. He said every man made the best bargain he could.

Q. Did you know that Mr. Vaile had a subcontract on file?—A. No, sir; I never knew Mr. Vaile had any subcontract.

Q. Was it mentioned in any of your communications with these parties?—A. No, sir.

Q. Verbally or in writing?—A. No, sir.

Q. Were you ever inquired of by Mr. Peck or Mr. Miner or Mr. Dorsey, or anybody else, as to the number of men and animals necessary to carry the mail on this route from Kearney to Loup City?—A. No, sir; I never was.

Q. Were you ever asked as to the number of animals you were using on this route?

Mr. TOTTEN. Your honor, is that right? Suppose he was not there. Suppose they asked somebody who knew more about it than he did. Is it material whether he was invited to give his opinion or not? Suppose they had asked my opinion. Suppose they would put me on the

stand and ask me if I was invited to give my judgment about it. I might not know as much about it as I do about some other things.

The COURT. I think he was the proper person to go to on the subject.

Mr. TOTTEN. But was it necessary to go to him? These men were professional mail-carriers, engaged in that business. Mr. Peck had had a large experience and ought to have known as much about carrying the mails as this gentleman, and unquestionably did.

The COURT. I will admit the question.

Mr. HINE. I note an exception.

Q. Were you ever asked by any of these parties how many men and horses were necessary to carry the mails from Kearney to Loup City?—

A. No, sir; never.

Q. Were you ever asked by either of those men, or anybody else, how many men and animals would be necessary for carrying the mail three times a week on a schedule of thirteen hours from Kearney to Loup City?—A. They never said anything to me about it.

Mr. HINE. Allow me to interpose the objection that the testimony is incompetent and immaterial.

Q. Nothing was ever said to you about it?—A. No, sir; nothing.

Q. [Submitting to witness paper marked 2 A.] Did you ever see that affidavit before you came on to Washington City?

[The witness examined the paper, but did not answer.]

The COURT. You can answer whether you ever saw that paper.

A. No, sir; I never saw it.

The COURT. That is Peck's affidavit, is it?

Mr. MERRICK. Yes; Peck's affidavit. I think the witness stated how many men and animals he used from Kearney to Loup City, but he left it in a little confusion. I will ask him again.

Q. How many men and horses did you say you used from Kearney to Loup City, leaving out everything else?

The WITNESS. On three trips a week?

Mr. MERRICK. In the first instance.

A. I used four.

Q. Four horses?—A. Four horses.

Q. And two men?—A. One man and one horse—

Q. [Interposing.] That was one trip a week?—A. Yes, sir.

Q. Now, when you came to three trips a week from Kearney to Loup City, how many did you use?—A. Six horses and two men.

By Mr. TOTTEN:

Q. You said something about one horse?—A. I was speaking about Kearney to Cedarville when I went one trip a week.

By Mr. HINE:

Q. Six horses and two men for what?—A. For the entire trip from Kearney to Loup City three times a week.

By Mr. MERRICK:

Q. [Offering witness a paper.] Did you ever see that contract dated April, 1878, and marked 8 A?—A. I do not need to look at it, for I never saw it.

Q. And never heard of it?—A. Never heard of it until I came here last February. [Correcting himself.] Yes, I heard of it in November,

Mr. TOTTEN. Never mind about that.

The WITNESS. In September last.

Q. Was that the first you ever heard of it?—A. Yes, sir.

The COURT. What paper is that ?

Mr. MERRICK. The contract made on the 1st of April, 1878, by Peck, by Miner as his attorney, with Vaile, and witnessed by Rerdell.

Mr. TOTTEN. Have we seen it ?

Mr. MERRICK. Yes, you have seen it several times. [To the court.] Now, your honor, I have some papers that I want to prove by the witness, and, as it is near the hour of recess, perhaps I had better stop and look them over and get them together.

The COURT. Very well.

At this point (12 o'clock and 30 minutes p. m.) the court took its usual recess.

AFTER RECESS.

The examination of Charles H. French was resumed as follows :

By Mr. MERRICK :

Q. What is the distance from Kearney to Loup City ?

The WITNESS. As I traveled it you mean ?

Mr. MERRICK. Yes.

A. Forty-eight miles.

Q. What is the distance from Loup City to Cedarville ?—A. Sixteen miles.

Q. When you circulated that petition for increased trips, was there any discussion among the people in that section—do not answer until the court says you may—in reference to expedition ?

Mr. TOTTEN. How does that discussion reach this case ?

The COURT. I overrule that question.

Q. When were you first advised, and how, that Dorsey or Peck or anybody wanted to let this route ?—A. We had a circular from one of the post-offices in the form of an advertisement.

Q. [Submitting a paper to the witness.] Look at that paper and say whether that is it.—A. That is.

[The paper in question was submitted to counsel for the defense and examined by them, after which it was handed to the clerk and by him marked 17 A.]

Q. [Submitting a letter to the witness.] Look at that letter and say if you received it.—A. Yes, sir ; I received that letter.

[The letter in question was submitted to counsel for the defense.]

Mr. MERRICK. I will read the advertisement first proved.

17 A.

MAIL CONTRACT.

The contract by the Post-Office Department for carrying the U. S. mail 4 years, from July 1, 1878, on route 34149, from Kearney to Kent, Nebraska, and back, once a week, having been awarded to a member of our firm, we desire to contract with an agent who will perform the service to the satisfaction of the department, the postmasters on the route, and the citizens supplied.

Any person desiring to enter into contract as such agent or subcontractor will please address us at once, stating his lowest price per annum. A duplicate of the letter mailed to us at Washington should also be mailed to us at the post-office at Kansas City, Missouri, which will be called for before awarding the route.

Respectfully,

JOHN W. DORSEY & CO., *Contractors.*

Lock-box 714, Washington, D. C.

PLEASE PUT UP IN A CONSPICUOUS PLACE.

In correspondence always place number of route at top of letter.

Q. [Handing a number of letters to the witness.] Were all these letters received by you?—A. They were.

[The letters identified by the witness were submitted to counsel for the defense.]

Q. [Submitting another package of letters to the witness.] Look over those and see if they are letters that you received?—A. [After examining the same.] Yes, sir; I received all those letters.

[The letters identified by the witness were submitted to the counsel for the defense.]

Mr. MERRICK. I now offer a letter, which the witness says he received from John W. Dorsey & Co.

Mr. INGERSOLL. We object to those letters for the purpose of proving a conspiracy, or for the purpose of proving an overt act. We object on those two grounds. For other purposes we do not care.

The COURT. I do not know what the letters are.

[Mr. Merrick commenced to read one of the letters.]

Mr. TOTTEN. [Interposing.] I am sorry to trouble you, Mr. Merrick, but I want to make a suggestion to the court which has not been made yet in relation to these letters and other papers and transactions which happened in 1878. The statute under which this indictment has been found, which amended section 5440 of the Revised Statutes, bears date May 17, 1879, and changes the law as laid down in 5440. Now, no act, no contract, no letter can be introduced in evidence here to sustain a conspiracy or a charge of conspiracy having been laid under the act of May 17, 1879, which occurred prior to that time. Your honor will remember that we mentioned that question, and the answer, of course, was that section 13 of the Revised Statutes made our objection a nullity—that it amounted to nothing because of that statute. The thirteenth section of the Revised Statutes provides that where a statute has been repealed anybody can be prosecuted or a penalty may be collected notwithstanding the repeal of the statute. Now, I want to submit to the court that section 13 of the Revised Statutes relates only to the Revised Statutes, and I want to make this point, and I have no doubt that your honor will agree with me on the subject: that the legislature, the Congress of the United States, which passed the law which we find in the Revised Statutes, had no power to say what a subsequent legislature could do. We say that all these transactions which occurred, all these things that were said and done prior to May 17, 1879, cannot be introduced in the trial of a charge of conspiracy laid under the act of May 17, 1879. I simply want to bring that to your honor's attention so that you may understand that it is one of the grounds upon which we insist that this kind of testimony cannot be introduced for any purpose upon these charges. So far as these letters are concerned, I cannot conceive how they are objectionable between Mr. Dorsey and the contractor, Mr. French. If we were settling the equities between these two parties there could be no objection to them. There is no statement in any of these letters that they were to pay Mr. Turner anything, nor is there any intimation that either Mr. Turner or Mr. Brady was to be paid anything. There is no intimation of corruption. There is not a word about it, nor is there a word in the testimony we have heard up to this time that there was any idea in anybody's mind that an unlawful combination was to be made and consummated. I want to bring to your honor's attention the fact that we insist upon that rule of law being applied to this case either now or at a subsequent period. We do not object to this testimony particularly. They might as well

prove a violation of a contract about furnishing horses by Mr. French, between French and Dorsey. We have got nothing to do with it. Brady was here, and Turner was here, and Vaile was somewhere else, and so it cannot operate upon them.

The COURT. No.

Mr. INGERSOLL. Will the court hear me for the moment. I will try to be as clear as possible, and as short as possible. I admit that under an indictment charging the conspiracy to have occurred prior to the 17th of May, 1879, they could prove anything that had happened before the statute was changed. The statute was changed on the 17th of May, 1879. Now, this indictment charges that the conspiracy was entered into on the 23d of May, 1879, six days after the statute had been changed.

The COURT. What statute are you referring to?

Mr. INGERSOLL. Five thousand four hundred and forty. Now, the question arises whether, under an indictment charging the conspiracy under the statute as changed, they can prove acts under the statute before this change. Upon that I want to read an authority. That is the simple point in this case. They were compelled to put it this side of the change in the statute, in order to save the statute of limitations. Now, the question arises, can they prove acts under the statute before it was changed to support an indictment laid after the change? Here is a case in 112th Massachusetts of the Commonwealth *against* Maloney:

Complaint for the illegal keeping of intoxicating liquor. The complaint alleged the keeping on the 10th day of September, in the year 1870.

At the trial, upon appeal, in the superior court, before Rockwell J., the evidence was confined to a keeping on the 10th of September, 1872. The defendant objected that such evidence would not support the allegation in the complaint. The court overruled the objection, and the jury having returned a verdict of guilty, the defendant alleged exceptions.

MORTON, J.—The complaint in this case alleges that the defendant, on the 10th day of September, 1870, at Northampton, unlawfully kept intoxicating liquors, with intent to sell the same. At the time laid in the complaint, the offense charged was punishable by fine and imprisonment; and in addition thereto the defendant was required to recognize to the Commonwealth in a sum not less than one thousand, nor more than two thousand dollars that he would not within a year violate any of the provisions of the laws relating to the manufacture and sale of intoxicating liquor (Statute 1869, C. 415, section 36-59.) By the statute of 1872, C. 317, which took effect on the 1st day of July, 1872, the punishment was so altered that the defendant might be required to recognize in a sum not less than one hundred, nor more than two thousand dollars, "with sufficient sureties."

Now, the court will see that this is laid in September 1872, and consequently the charge in the indictment was after the statute had been amended. Really what the man did do, he did before that statute was amended.

The punishment which might be imposed under the statute of 1872 is greater in degree than that required by the statute of 1869, as it imposes upon the defendant the additional burden of furnishing sufficient sureties to his recognizance.

This being so, we are of opinion that the proof that the defendant kept intoxicating liquors with intent to sell the same, on the 10th day of September, 1872, did not sustain the allegations of the complaint.

It is true that generally, in criminal prosecutions, it is not necessary that the precise time alleged should be proved. But every indictment or complaint must allege a precise day, and the time alleged must be such that the record will show that an offense has been committed, and that the court may ascertain from it what punishment is to be imposed.

So in this case, by the date of the conspiracy placed in the indictment the court is informed that the punishment sought to be inflicted is under the statute as amended on the 17th of May, 1879.

When a statute makes an act punishable from and after a given day, the time of the commission of the act is an essential ingredient of the offense, to the extent that it must be alleged to have been after such day. So if a statute changes the punishment of an existing offense by imposing a severer penalty, with a clause saving from its operation offenses already committed, the allegation of time is material.

Even with the saving clause :

The nature and character of the offense, and the penalty affixed to it depend upon the time when the act charged is committed. If in such a case an indictment alleges the act to have been committed before the passage of the statute enlarging the penalty, the offense charged and the punishment annexed to it are different from the offense and punishment, if the act is committed after such time.

Now, according to this indictment, this conspiracy was entered into after the act was amended; because the indictment says they conspired on the 23d of May, and the statute was amended on the 17th of the same month.

They are different offenses, and an allegation of one is not sustained by proof of the other. Otherwise the defendant would be exposed to a greater punishment upon a trial than he would be upon a plea of guilty.

In the case at bar, the offense proved was different from the offense charged in the complaint, and the defendant was entitled to the ruling requested, that the evidence did not support the complaint.

Now, the point I make here is that whatever happened in 1878, before the act was changed, cannot be given in evidence to show that after the act was amended these parties conspired. I do not care what they did in 1878. It throws no light, as a matter of fact, upon the question now under consideration. Did they conspire in May, 1879? Did they conspire under the new act at any time after the date fixed in the indictment? Or, giving it the widest possible construction, did they conspire at any time after the 17th of May?

For that reason I object to all these acts. I do not see how they prove or tend to prove the conspiracy. I have no objection to everything here being proved simply to show the course of business or the circumstances surrounding all the parties. I have no objection to that, but I do object to these letters; I do object to this testimony if it is claimed that they prove, or tend to prove, a conspiracy on the part of anybody. I object, because under the act as it was amended on May 17th, 1879, they are compelled to prove what happened under the new act. If they wish to prove the conspiracy they are not allowed, and cannot be allowed, to prove a solitary act, no matter how bad, prior to the 17th of May, 1879.

Mr. CHANDLER. If your honor please, it is subject to this further objection: Suppose this law was the only law upon the subject of conspiracy; suppose there had been no prior law upon the subject, can they introduce facts that existed prior to the indictment of this conspiracy statute, which acts were innocent in themselves at the time they were committed, and undertake to utilize those acts as proof of the character of other acts which occurred after the enactment of the statute? Can they go back prior to the passage of this law and take up circumstances and incidents of conduct of these parties which were perfectly innocent, which were without legal significance, and, in connection with that, that occurred subsequent to the statute, and build up a conspiracy out of that connection? Are they not giving to the statute an *ex post facto* operation by that method of proof? Now, we say that this indictment stands here in court at this time as though this were the only statute upon the subject of conspiracy that was ever known in the code of the United States; that the other statute having been repealed by this statute everything that occurred under that statute has lost its crimi-

nal character. If they had indicted us under that statute, then they might, with some plausibility, claim the effect of this thirteenth section to continue the criminal character of the acts which occurred under that statute; but not having indicted us under that statute, then this indictment stands as though there were no other statute, as though there had been no other statute. Now, I say, that being so, the boundary of this inquiry is limited to the date of the enactment of this law. You cannot go beyond it into acts which have lost their criminal character, if they ever were criminal, by reason of the repeal of the law that existed at that time, and utilize those facts in connection with others that occurred after the law was repealed, and out of that connection undertake to distill a crime under this new law.

The COURT. Prior to the passage of this act of 1879 the law of conspiracy in this District was the common law conspiracy.

Mr. TOTTEN. No, your honor; you mean prior to the Revised Statutes. Section 5440 first became a law here in 1875, when the Revised Statutes went into operation.

The COURT. I thought 5440 was enacted in May, 1879.

Mr. INGERSOLL. No.

Mr. TOTTEN. Section 5440 was taken out of a revenue law passed in 1872; but it was transposed bodily with some modifications into the Revised Statutes in 1875.

The COURT. Wherein lies the difference between the act of 1872 and the act of 1875?

Mr. TOTTEN. There is no particular difference between them; but there is a difference between them and the act of May 17, 1879, in this, that the punishment is entirely different.

Mr. INGERSOLL. I think the court does not quite understand me.

The COURT. Perhaps I do not.

Mr. INGERSOLL. There was a statute passed which applied to this District in 1875, clearly setting forth this crime of conspiracy. It is a statutory crime. The crime, in order to be complete, had to have one overt act at least; in that it differed from the common law. That was the law in this District from 1875 until May 17, 1879.

The COURT. The act of May, 1879, merely changed the degree of punishment.

Mr. INGERSOLL. That is all. Now the question arises, the punishment having been changed, and this indictment being laid under the new statute, that is, under the amendment, whether you can prove acts under the statute before it was amended?

The COURT. I understand your proposition.

Mr. INGERSOLL. Or whether it should be a line back of which they cannot go, when we take into consideration the further fact that back of that line is the statute of limitation.

Mr. MERRICK. In other words, the statute applies to evidence and not to crime.

The COURT. In regard to conspiracy the range of evidence is very latitudinous. It is laid down in all the books that for the purpose of showing a conspiracy you may show even the family relationships that exist between the parties charged. You may go back to their birth and show that they were related to each other in consequence of marriages in the family. In this case, on the same principle, we are receiving evidence connecting these parties together in a business relation antecedent to the date of the statute under which the indictment is found. Now, as to these acts—some of which may be regarded as overt acts—it is another question whether they can be received as

proof of overt acts under this indictment; but for the purpose of showing the relationship of the parties, their connection in business, and in friendship, and their connection in this particular class of business, I think the evidence is competent, even though it relates to the conduct of the parties prior to the enactment of the new law. If any of this evidence goes beyond showing the relationship of the parties, so far as to create an impression that the acts were criminal in contemplation, or as done by the parties, that is incidental.

Mr. TOTTEN. And it will be excluded.

The COURT. No; it will not be excluded. You cannot exclude it. The evidence is admitted for the purpose of showing the association of the parties, and so connecting them with the conspiracy charged to have existed after the passage of the law.

Mr. TOTTEN. Then your honor would not, of course, use this testimony to show any relation between people who are not mentioned or connected with the transaction. Now, these contracts——

The COURT. [Interposing.] This indictment charges eight persons. The evidence we are receiving now tends to show a business association and business intimacy.

Mr. TOTTEN. Not with our clients.

The COURT. Between some of them.

Mr. TOTTEN. Yes.

The COURT. Although a conspiracy may come into existence, and be entered into by a few, yet if there was a joint association subsequently all of them may be indicted after the combination has been completed by these accessions, and the evidence may be admitted to show the nature of the association before the accessions were made to them.

Mr. TOTTEN. Would there not be a new conspiracy every time a new man came in, under our statute; not the common law?

The COURT. I do not know about that; undoubtedly it is admissible proof in an indictment against nine that the original conspiracy was entered into between six and the others came in afterwards.

Mr. TOTTEN. Not if the statute of limitations interposes.

The COURT. The statute of limitations is another question. I have not heard it mentioned until now. I believe the statute of limitations could not be pleaded to this indictment, because the indictment on the face of it fixes a period for the conspiracy within the time fixed by the statute.

Mr. INGERSOLL. That has to depend on the evidence.

Mr. TOTTEN. Yes; it has to depend on the evidence. Therefore, its depending upon the evidence it must depend upon the instructions which the court must give to the jury. I was only trying to get at what the court thought about it for this reason: That these letters which are now being discussed have no reference to Brady, Vaile, and Turner. Now, they must establish some marriage relation, or some other relations, between Brady and somebody else, so that a man may marry himself into a conspiracy, your honor.

The COURT. Maybe they will. First, there was the contractor. Then a connection was established between him and Dorsey, and then on further evidence we have Miner's name in connection with it, and now we have Vaile's name in connection with it, and I do not know where it is to stop. I cannot tell.

Mr. INGERSOLL. I made the motion in order to get the view of the court.

The COURT. Those are my views.

Mr. INGERSOLL. I would not want the letters excluded, for fear the

gentlemen would think there was something in them. I would a great deal rather they would read them.

The COURT. Then we are all satisfied.

Mr. WILSON. I want to make a motion with a view to hastening the end of this case.

Mr. BLISS. For expedition.

Mr. WILSON. For expedition, or increase, or whatever you choose to call it, to hasten towards the end, and I am willing to contribute my little share towards that purpose. Now, I suggest that as this is a question of importance, that we now put upon the record such an objection as will cover all the testimony that is offered that occurred prior to the passage of the act which has been mentioned, and that an exception be taken to it, and then we will travel right along and have no more disturbance about it. If we can do that it will expedite matters. Now, therefore, for the purpose of saving that point, I will now interpose this objection to this testimony on the part of all the defendants: Because it has relation to a time anterior to the 17th of May, 1879, when the act was passed amending, or, as we claim, repealing, that old section 5440, and the court overrules that objection, to which we take an exception, and will probably tender a bill of exceptions setting forth all the facts.

The COURT. You make your objection to this evidence as it is offered. The objection is overruled and the evidence admitted.

Mr. WILSON. I only make it for the purpose of saving time.

Mr. HINE. But not to waive specific objections heretofore taken to certain items of evidence.

The COURT. I do not expect anything of that sort.

Mr. MERRICK. That does not waive anything at all.

The COURT. I will just say here that it appears to me to be a tedious, vexatious, and laborious method of trying a case to try it on exceptions to evidence. Let us have the evidence so far as it is pertinent for the subject, and after it is in let us try the case upon its merits. If you want to try a case upon exceptions to evidence, every piece of evidence makes it necessary for the court to go over the whole case every time. But, of course, when evidence is incompetent, it is proper to make the objection. I understand precisely your object, gentlemen, and will give you every facility for making your point. Proceed Mr. Merrick.

[Mr. Merrick then read the letters and papers, which he offered in evidence, as follows:]

JOHN W. DORSEY & Co.,

Mail Contractors, Branch Office, Kansas City, Mo.:

DEAR SIR: Your favor of the 17th instant is received, and we would say in reply that we regard that your bid is too high, as it is more than we are giving for it. There were four or five bids put in at the Post-Office Department lower than yours. We expect to go to your place as soon as we are through here, which will be the last of May or first of June. But if you wish to bid again, we would be pleased to receive it and be glad to close the contract with you. Other things being equal, we always give the present contractors the preference. Whoever we contract with we reserve the right to prorate, if the service is increased, and pay you 75 per cent., if expedited, of the increased pay,

Hoping to hear from you again soon, we remain, yours, truly,

J. W. DORSEY & CO.

Mr. TOTTEN. You did not give the date?

Mr. MERRICK. I gave the date when I was up before—the 4th month, 25th day, 1878.

The next letter has the same heading, and is as follows:

5, 24, 1878.

C. H. FRENCH :

DEAR SIR: Your favor of 22d is received, and we have inclosed a contract which you can complete. Please be particular to have witnesses for your signature and for your sureties also, and then the names of the sureties written in the top of the second page, where there is a blank for that purpose. Any sureties whom your postmaster will approve of will be satisfactory to us. The postmaster can sign his name at the bottom of the third page. When the time is expedited the pay is always increased in proportion. Please close the contract at your earliest convenience, and mail to us at Omaha, Neb., and we will send you a duplicate and order for mails, &c.

Yours, truly,

J. W. DORSEY & CO.

[To Mr. Bliss.] What is the date of the mail contract?

Mr. BLISS. The mail contract is dated April, 1878. The fifth month was May. This is dated two months prior to the date of this letter.

Mr. HINE. I will say that the time of that contract is October, 1878. It is dated April 1, because Mr. Miner is not here. It should have taken effect the 1st of July, of course. It was made in October, but Mr. Miner was not here from the 1st of April until the 23d of July.

Mr. MERRICK. What is the date of the contract?

Mr. BLISS. The contract is dated April, 1878.

Mr. HINE. It is dated long before the other party executed it.

Mr. BLISS. The Vaile contract is here, sir.

Mr. MERRICK. I think it is dated the 1st or 15th.

Mr. BLISS. It recites, "This indenture witnesseth that on this 1st day of April, 1878, John M. Peck and H. M. Vaile have made a contract," and it is signed by Peck, and Miner, as his attorney in fact, by Vaile as principal, and by Rerdell as the witness.

Mr. MERRICK. The next letter is dated May 5, 1878.

DEAR SIR: Your favor of the 1st is received, and we would say that as others have bid lower, we could not accept yours. The first man who will bid \$700 for one round trip per week, \$1,300 for two trips, \$1,800 for three trips, and \$3,300 for six trips per week, if the service is increased, and if the time is expedited, we to pay him 65 per cent. of the increased pay, can have the contract. Hoping we shall hear from you again soon, and that you may be the lucky man,

We remain, yours, truly,

J. W. DORSEY & CO.

The next letter has the same heading.

KEARNEY, NEBR., May 31, 1878.

C. H. FRENCH :

DEAR SIR: I learn by the postmaster here that you live in Loup City, though I ought to have known it by looking at your letter of the 22d. I am going to Red Cloud Saturday morning, and perhaps to Orleans, and will return here Tuesday night, June 4th. I want to close the contract before I leave here, and if it is a possible thing I hope you will meet me here Tuesday night and have everything completed so I can take the 6.40 a. m. train to Omaha Wednesday. There is another party who will take the route at the same price, but he was one day too late, as we had accepted your bid. My time is very limited, so I do not want to lose another day after Tuesday, and hope you will have everything all ready, and oblige,

Yours, very truly,

J. W. DORSEY & CO.,
Per J. W. D.

Will stop at the Central Hotel.

[The letters just read were marked 18 A to 21 A, inclusive.]

Here is another batch of letters that have been identified and shown to the other side. Here is a paper which I will read, which seems to

it off at the top and has previously
recognized by some of the jury possibly.
official paper. It is dated September 25, 1870.

RILEY H. FRENCH, Loup City, Nebraska:

DEAR SIR: We inclose a circular declining to change schedule, because too much
was asked. We are working a little in the dark, but conclude you want the
whole week to make the round trip. This can only be done by heading the route in
the middle so that the two nights spent at Loup City are not counted. We inclose
schedule made up that way which, if it suits, get postmaster's signature and return to
us. If not satisfactory make one that is, but figure so as not to take more than sixty-
eight hours between Kearney and Kent, and vice versa.

Truly, yours,

JOHN W. DORSEY & CO.

[The paper just read was marked by the clerk A 22.]
The next letter has Washington, in print, October 21, 187-, in man-
uscript.

C. H. FRENCH, Loup City, Nebr.:

DEAR SIR: For offices at Sweetwater, Cedarville, and Centennial you should return
original and duplicate collection orders. We can get no settlement of account until
they are returned. Will answer question to-morrow.

Yours, truly,

J. M. PECK.

[The letter just read was marked by the clerk 23 A.]
The next letter is as follows:

LOCK-BOX 714, WASHINGTON, D. C., January 28, 1879.

C. H. FRENCH, Loup City, Nebr.:

DEAR SIR: Yours of the 23d received. There is little probability of increase in serv-
ice until after first of July, as the appropriation is nearly or quite exhausted for this
fiscal year. I will do what I can to have Cedarville put on another route. Cannot
promise that it will be done by any means, and in any event it is likely to take some
time.

Yours, truly,

JOHN M. PECK.

[The letter just read was marked by the clerk 24 A.]
The next is:

LOCK-BOX 714, WASHINGTON, D. C., April 15, 1879.

C. H. FRENCH, Loup City, Nebr.:

DEAR SIR: Yours of the 3d received. We are hoping that Douglas Grove will
put on some of the routes to be advertised soon to commence October first. The r
ords of the department show that South Loup was discontinued a long time ago.
had no notice of it. Centennial has not been discontinued, and we fear cannot be.

Truly yours,

JOHN M. PEC

three trips to Loup City will be ordered soon. Se
It will be well for your people to writ
to continue to urge it.

WASHINGTON, D. C., *January 5, 1880.*C. H. FRENCH, *Kearney, Nebraska :*

Yours of 29th received. I have never heard of Alexander Baillie, much less thought of employing him on route 34149.

Yours, truly,

JOHN R. MINER, *Agent.*

P. S.—The postmaster at Cedarville has sent a register which shows only two mails a week. No register is required from Cedarville, as that is not a schedule point. Either furnish that office three mails per week, or see that the postmaster sends no more registers.

(Letter just read marked 26 A by the clerk.)

Here is a paper with the top cut off somewhat like the papers that I have read.

WASHINGTON, *October 19, 1878.*C. H. FRENCH, *Loup City, Nebr. :*

DEAR SIR: On the 25th of September I sent you a blank for a schedule on your route. Why don't you return it? The department are blowing me up for the delay. Hurry it up.

Yours, truly,

JOHN R. MINER.

(The clerk marked the letter just read 27 A.)

By Mr. MERRICK:

Q. [Submitting papers to witness.] Now, will you look at these and see whether you received them or not?—A. [After examining the same.] I did.

Mr. MERRICK. I had these marked in their regular order, but the other side have taken them out of their envelopes. I do not know how they will come. Part of this is in print and part in manuscript.

WASHINGTON, *November 6, 1878.*

Mr. CHARLES H. FRENCH,
Loup City, Nebr., Route 34149:

DEAR SIR: I hand you below a statement of your account for quarter ending September 30th, 1878. Pay per annum, \$700. Pay per quarter, \$175. Collections from postmasters, \$24.75. Deductions, nothing. Fines. Balance due, for which draft is inclosed, \$150.25. Total, \$175.

Yours, truly,

JOHN M. PECK, *Contractor.*

And then there is printed an N. B., which I will read now, and not read again on the other papers.

To secure prompt settlement of your account it is absolutely necessary that you see that the postmaster at each end of the route send every month registers of arrivals and departures, and that at the end of the quarter you make immediate report of the collection orders sent you, returning the acknowledgment, triplicate orders, and the unpaid orders, original and duplicate, to me, lock-box 714, Washington, D. C. Also get signature of postmasters at both ends of the route, certificate of service blanks for which will be sent you.

(The paper just read was marked A 28 by the clerk.)

The next is dated February 1st, 1879, to C. H. French, Loup City, Nebr., route 34149:

DEAR SIR: I hand you below your account, and so forth, for 1871. Pay per annum, \$700. Deductions, and so forth, and balance due you, for which draft is inclosed, \$175. Total.

Yours, truly,

J. M. PECK, *Contractor.*

The next is May 1, 1879, to Mr. Charles H. French, route 34149; "Dear sir." The substance is the same I read in the previous letter,

inclosing drafts for \$175, signed "Yours, truly, John M. Peck, contractor."

The next is August 1, 1879, to Mr. Charles H. French, Loup City, route 34149. The same as I have read before. Draft for \$175 inclosed. Signed "Yours, truly, John R. Miner, agent for contractor;" containing the same printed notice at the bottom, with directions to send to lock-box 714.

The next is of the same tenor and to the same effect, bearing date November 1, 1879, representing pay per quarter at \$322, sending draft for \$322.10, signed "John R. Miner, agent for contractor," directed to be returned to lock-box as before.

The next is January 31, 1881, a letter to French, the same in substance as the others. Pay per quarter, \$396.85, sending draft for that amount. Signed "John R. Miner, agent for contractor," to be returned to lock-box, &c., the same as before.

The next is May 1, 1880, to French, substantially the same. Quarter's pay, \$396.85. Balance due, for which draft is inclosed, not stated. Signed "Yours, truly, John R. Miner, agent for contractor."

The next is July 31, 1880, to French, a letter in substance the same. Pay per annum, blank; per quarter, \$396.85; draft for that amount inclosed; signed "John R. Miner, for contractor," directing papers to be sent to lock-box 714.

The next is for quarter ending 1880, in substance the same. Pay per quarter, \$396.85. Balance due and draft inclosed, blank. Signed "Miner, for contractor;" address, the same lock-box.

The next is February, 1881; letter the same. Pay per quarter, \$396. And then there are some figures on here——

Mr. TOTTEN. [Interposing.] If the court please, haven't we heard enough? This man seems to have made a contract to carry the mails for so much, and seems to have gotten his money every quarter. There is a letter of transmittal sending him a check. Has not enough of this been read?

The COURT. I think so.

Mr. MERRICK. I would rather go through with them.

The COURT. How many more have you?

Mr. MERRICK. Only a few more. I can give the dates without giving the letters.

Mr. INGERSOLL. We will admit that he was paid every quarter during the whole time.

The COURT. There is no necessity for going any further with this.

Mr. MERRICK. I am glad to see the counsel upon the other side solicitous for the saving of time. The letter that I have in my hand is dated February 1, 1881. Then the other letters are May, 1881, August, 1881, and November, 1881, and February, 1882, all signed by Miner, agent for contractor, down to the letter of the 7th of February, 1882, which is signed by John M. Peck, contractor, and the letter M. under it. The address is lock-box 714. Those are all the letters we want to introduce now.

[The papers just read were marked by the clerk from 29 A to 41 A, inclusive.]

The COURT. Have you any more letters, Mr. Merrick?

Mr. MERRICK. We have no more letters. The witness is theirs now.

CROSS-EXAMINATION.

By Mr. HINE :

Q. You have been a contractor for some years, and have had some experience in that way ?—A. I have been a contractor for five years.

Q. How long have you resided in the region of country that this route passes over ?—A. Seven years.

Q. Did you commence on your own account first as contractor ?—A. I commenced carrying the mail for the contractor who had the same route before Mr. Peck got it.

Q. Did you carry it simply as an employé or under a contract with him ?—A. Simply as an employé.

Q. That was from Kearney to Kent, was it ?—A. No, sir ; it was from Kearney to Douglas Grove.

Q. I understood you to say that you knew of no other arrangement, so far as payment to you was concerned, or at least that the contract under which you carried the mail from 1878 until the present time, is the contract that you identified here as the one you made with John W. Dorsey ?—A. That is all the one that I have ever seen.

Q. Then, your carrying of the mail, as you now claim, was under this contract [holding up a paper] ?—A. Under the contract that I made with John W. Dorsey.

Q. [Referring to the indictment.] It seems that route 34149 commenced at Kearney, did it ?—A. Yes, sir.

Q. Kearney is on the Northern Pacific Railroad ?—A. On the Union Pacific Railroad.

Q. And was at that time—that is, the route was completed past Kearney ?—A. Yes, sir.

Q. The first post-office out from Kearney was Prairie Centre ?—A. Yes, sir.

Q. How far is that from Kearney ?—A. At the time that route was let, it was ten miles and a half.

Q. Well, the next post-office was South Loup, was it ?—A. It was discontinued.

Q. The next post-office was South Loup ?—A. That was discontinued before the route was let.

Mr. HINE. I ask the attention of the court to this witness. I have asked him the question twice.

Mr. MERRICK. Hasn't he answered ?

Mr. HINE. No. I asked him if South Loup was not the next post-office. He has answered twice that it was discontinued. I only want the witness to understand that he must answer my questions. I am asking in reference to the advertisement.

The WITNESS. Oh, that was the next post-office ; yes.

Q. [Resuming.] What was the distance from Prairie Centre ?—A. I think it was about nine miles and a half.

Q. The next post-office was Centennial, was it not ?—A. Yes, sir.

Q. What distance was that from South Loup ?—A. About four miles.

Q. And the next was Sweetwater, was it not ?—A. Yes, sir.

Q. What distance was that from Centennial ?—A. That is about six miles.

Q. And the next post-office was Cedarville, was it not ?—A. Yes, sir.

Q. What distance was that from Sweetwater ?—A. About twelve miles.

Q. And the next post-office was Loup City ?—A. Yes, sir.

Q. What distance was that from Cedarville ?—A. Sixteen miles.

Q. Then followed Arcadia, Douglas Grove, and Longwood, to Kent and the distance from Loup City to Kent was how far?—A. About fifty-four miles.

Q. And when you took this contract from Dorsey, as you have stated commencing from Kearney, the first post-office was Prairie Centre, next was South Loup, the next Centennial, the next Sweetwater, next Cedarville, the next Loup City, and then Arcadia, Douglas Grove and Longwood, to Kent?—A. That is the way it was advertised.

Mr. HINE. I will pass this up to the witness to see whether that is contract, and whether I have correctly stated the post-offices on [Contract submitted to witness.]

The WITNESS. [After inspecting the contract.] No, sir; this is the contract.

Mr. HINE. Well, that is the contract that Mr. Merrick handed to me. I have not examined it.

The WITNESS. This is not the contract.

Mr. HINE. Mr. Merrick, will you hand me the correct one?

Mr. MERRICK. That is the Post-Office Department contract. Here it is in this jacket which I handed you. You asked me for both of them, for the first and the second. That is the reason I was so particular to tell you to keep them in their inclosure.

By Mr. HINE:

Q. [Resuming.] Well, I will commence again, then. The contract that you say you entered into and under which you performed this service from early in 1878 until the present time commences the route from Kearney and places the next post-office at Prairie Centre, the next South Loup, the next Centennial, the next Sweetwater, the next Cedarville, the next Loup City, and then on, Arcadia, Douglas Grove, and Longwood to Kent, one hundred and twenty-five miles and back. Is that the contract that you have been mentioning as the one under which you performed the service?—A. I presume it is, sir.

Q. And those post-offices you have given and the distances between them?—A. Yes, sir.

Q. Then you gave us those distances correctly, I presume?—A. As near as I could. I have not measured them. I have been over the route good many times.

Q. I notice that you speak of a Fitzalon. That does not seem to have been mentioned at all in your contract. It was not advertised. I notice that the schedule or the diagram that the other side gave me has not only Fitzalon upon it, but has Verdurett. I do not see Verdurett post-office mentioned on your contract?—A. It is not on the route yet; it is right on the road.

Q. I will pass this up to you to show that the route, as per the diagram given us from the Post-Office Department, does have Verdurett right on the line?—A. It is right on the line, but not on the route.

Q. Well, Cedarville does not seem to be on the line. It seems to have passed off to one side.—A. Yes, sir; as it is marked here. [Indicating paper.] That is the way that I have always supplied the different post-offices.

Q. Then, how did you get from Sweetwater to Cedarville?—A. I did not go there, sir.

Q. You did not go to Cedarville at all?—A. No, sir.

Q. Did you not supply Cedarville with mail?—A. I did, sir.

Q. Then you did go there?—A. I went from Loup City, not from Sweetwater.

Q. You passed from Sweetwater to Loup City?—A. Yes, sir.

Q. When you took this contract you were to go from Sweetwater to Cedarville, were you not?—A. I supposed so; yes, sir.

Q. How long did you suppose that you were to go from Sweetwater to Cedarville direct?—A. I never did go that way.

Q. But your contract provides that you shall go that way, does it not?—A. I always supplied Cedarville by a side supply.

Q. A side supply from what place?—A. From Loup City.

Q. You say that Cedarville is sixteen miles from Loup City?—A. Yes, sir.

Q. So that for the purpose of supplying Cedarville from Loup City you went thirty-two miles?—A. I did.

Q. Why did you go that distance?—A. Because it was cheaper for me to go that way than to try to go where I could not get.

Q. From Sweetwater to Cedarville was only twelve miles, you have told us?—A. From Sweetwater to Cedarville was twelve miles. That is right.

Q. Why did you not go that way?—A. Because I was ordered to supply Fitzalon, and I could not go to the two.

Q. Fitzalon is how many miles from Sweetwater?—A. Six.

Q. How many miles is Cedarville from Fitzalon?—A. About thirteen.

Q. By whom were you ordered to supply Fitzalon?—A. The order came from John M. Peck.

Q. Now, if you had not been ordered to supply Fitzalon, had gone from Sweetwater to Cedarville, what would have been the distance from Kearney to Loup City by Cedarville?—A. It would have been sixty-four miles.

Q. And as you run the route, what was the distance from Kearney to Cedarville?—A. It would have been sixty-six miles if I went by Cedarville, and the way I did go it was forty-eight miles to Loup City, and sixteen miles from Loup City to Cedarville.

Q. It was advertised as seventy-five miles from Kearney to Loup City was it not?—A. No, sir; it was advertised as one hundred and twenty-five miles from Kearney to Kent.

Q. And the distance from Loup City to Kent, you say was how much?—A. Sixty-four miles, going by Cedarville.

Q. No; From Loup City to Kent?—A. Fifty-four miles.

Q. In Loup City, Messrs. Hale & Nightingale reside?—A. Yes, sir.

Q. You spoke of them as your friends and attorneys?—A. I did.

Q. Were they your attorneys on matters connected with the postal service?—A. Yes, sir.

Q. And they frequently wrote letters for you, or rather represented you in matters pertaining to the route, did they?—A. They did.

Q. And that from the time that you first became connected with it until the present time?—A. Yes, sir; that is, Mr. Nightingale did the writing. Mr. Hale was in the firm.

Q. And he signed your name ordinarily to letters?—A. No, sir; I always signed my own name.

Q. He did represent you on the route?—A. He wrote letters for me with my consent, and if he signed my name at all it was by my consent. I do not remember now that he ever did sign my name, but he might have done it.

Q. And if he did sign your name he had full authority to do it?—A. He did; yes, sir.

Q. Now, you commenced operating that road about what time?

The WITNESS. From Kearney to Kent ?

Mr. HINE. From Kearney to Kent.

A. I commenced on this contract on the 1st day of July, 1878.

Q. Then you took this contract to commence immediately after your service had expired under the old contract ?—A. Yes, sir.

Q. Who was the old contractor ?—A. I think his name was Bradbury—the one that took it from the Government. A subcontractor hired me to do his work.

Q. What was the real distance, independent of the advertised list of the Post-Office Department, between Kearney and Kent ?—A. I think that it was advertised about right; it might have been a very little shorter than that.

Q. But you make it forty-eight miles from Kearney to Loup City, and only fifty-five miles from Loup City to Kent ?—A. Well, that is the way I traveled it; and then you must add on the sixteen miles to Cedarville.

Q. That is only one hundred and five miles ?—A. That is the way I traveled it understand.

Mr. BLISS. By "sixteen miles to Cedarville," you mean sixteen out and sixteen back ?

The WITNESS. Yes, yes.

Mr. BLISS. The sixteen miles was gone over twice, it being a side supply.

By Mr. HINE:

Q. So you count that as thirty-two miles ?—A. No, sir; I count it sixteen miles going one way on the route.

Q. Mr. Merrick says Cedarville is eight miles from Loup City out; is that so ?—A. No, sir; sixteen miles.

Q. Now, the time that you had for carrying the mail from Kearney to Kent was sixty hours ?—A. I had three days.

Q. The time provided under the contract was sixty hours ?—A. I believe so; sixty-eight hours, I think in my contract.

Q. Eight hours was added, was it not, because of some addition to the distance; Fitzalon was added ?—A. I do not know how that was.

Q. Three days; that is you could have carried it twice a week ?—A. I had three days to go there in, and three days to go back to Kearney in.

Q. How many men, and how many animals would it require, having three days to go, and three days to come one hundred and twenty-five miles ?—A. I used five animals.

Q. I did not ask you how many you used; we want to get, not at what you did, but only the animals that would be required to go one hundred and twenty-five miles and return, once a week ?—A. My idea of it was that it required five animals.

Q. To go three times a week how many animals would it require ?—A. I did not go three times a week.

Q. You went to Loup City, more than half the distance ?—A. Yes, sir.

Q. How many animals did it require to go three times a week ?—A. It required ten animals.

Q. One hundred and twenty-five miles at sixty hours would be about two and one-twelfth miles an hour. A horse will walk that easily, will he not ?—A. He will in some places.

Q. Will he not over such a route as that walk two and a twelfth miles and hour ?—A. Some parts of it he would not.

Q. What part of it ?—A. From Cedarville to Loup City.

Q. That seems to have been a side line?—A. Yes; but that was in the bargain.

Q. Always when you have been talking about the distance from Kearney to Loup City you advised us it was only forty-eight miles. If Cedarville is included what would be the distance?—A. Sixty-four miles as I traveled.

Q. But you went from Loup City out to Cedarville and had to return. That would make thirty-two miles would it not?—A. Thirty-two miles going both ways.

Q. Would not that make it eighty miles then traveled to take the mail from Kearney to Cedarville and back again?—A. If you count it thirty-two miles it would of course.

Q. But you had to travel thirty-two miles, had you not, to go to Cedarville and back to Loup City?—A. I did. The way I traveled to go there and back is thirty-two miles.

Q. What distance would a horse travel, say at the rate of two miles and an half an hour, and keep it up day after day for a year? You have had considerable experience in that direction.—A. If it is on a good road he would travel more than that. I should not want mine to travel that slow.

Q. You would not have a horse travel that slow?—A. No, sir.

Q. What is your idea about the speed that a horse should travel?—

A. He ought to travel about four miles an hour.

Q. What speed did you have to travel to carry the mail from Kearney to Loup City and Cedarville?—A. I have not figured that up yet to see how much speed I used.

Q. Were you running a stage line before you took this contract?—

A. I was.

Q. You have been carrying passengers for how long?—A. All the time I have been doing anything, whenever any come.

Q. How long have you been carrying passengers over your route?—

A. I have been carrying them from the time I took the first mail to run on my own account.

Q. Before you went into this Dorsey contract?—A. Yes, sir.

Q. How long had you been carrying passengers before that time?—

A. About eleven months.

Q. And owned your own horses and stages?—A. Yes, sir.

Q. And had established a considerable passenger traffic over that route?—A. Not much then. There were not many to go.

Q. But you had your stock and your horses?—A. I did.

Q. On ascertaining to whom this contract was let for carrying the mails you made a proposition to carry it, did you?—A. I wrote to him stating what I would carry it for.

Q. I noticed that the first letter in reply that was read here stated that your bid was more than they were receiving. Will you tell us what your bid to them was for carrying that mail once a week?—A. I do not remember what it was.

Mr. BLISS. The original letter is in your possession; you can produce it.

Mr. HINE. I do not ask for that.

Mr. BLISS. You have it.

Q. Do you recollect about the time you wrote Dorsey & Co., or anybody, in reference to it?—A. It must have been some time in April, I think, I wrote to them.

Q. Were you doing any other business at that time?—A. No, sir. [Correcting himself.] Yes; I was farming part of the week.

Q. You were not doing very much at farming, I presume. Your special business was mail carrying?—A. Yes, sir.

Q. You were thinking at that time, and had figured up the amount you could carry the mail for over that route, had you?—A. Yes, sir.

Q. And now you are telling the court and jury that you cannot recollect what your first offer was?—A. I do say so. I do not remember what it was.

Q. Can you tell within \$200?—A. I do not know but I might.

Q. Well, give us your recollection?

Mr. MERRICK. Wait a moment. Counsel says the witness wrote making this proposition. They have the letter.

The COURT. How does the court know they have the letter?

Mr. MERRICK. They say he wrote.

Mr. BLISS. The witness has not the letter. Whatever was done was in writing.

The COURT. He has answered that he does not remember, and that is enough.

Mr. HINE. I have a right to test the witness's recollection I presume?

The COURT. He has told you he does not remember.

Q. You have stated that you can tell us within \$200 of what your offer was. Will you please do so?—A. I cannot say positively that I can tell within \$200, but my idea is that it was something over \$1,000 that I offered to carry it for.

Q. You seem to be telling us specific facts occurring about the same time. This would appear to be a prominent fact. Do you not now recollect the amount?—A. No, sir.

Q. When you received the second letter that was read you sent on another bid, did you?—A. I don't remember whether I did or not.

Q. That was a matter you were very much interested in, was it not?—A. My idea is that they wrote me what they would give in the second letter.

Q. Where is that letter that they wrote to you?—A. I don't know where it is.

Q. You did not keep all your letters, then?—A. I presume I did not.

Q. Who sorted out these letters for you to bring here?—A. I sorted them myself, and took all I had—all I could find.

Q. Had you shown them to anybody before you brought them here?—A. No, sir.

Q. It is hardly possible you would forget whether you made a proposition, or whether you received one?—A. I had shown a part of them as regards the pay to Mr. Siebold, the post-office inspector. The letters there that pertained to payment is all I showed him—and the contract.

Mr. HINE. That is not specially important.

Q. Before you wrote to the original contractor, or anybody connected with the route, how frequently had you been carrying the mail?—A. Once a week.

Q. How frequently did you run your stage line?—A. Once a week.

Q. How soon did you put on your stage line to run three times a week?—A. I think it was in May, 1879.

Q. Did you communicate that fact to these parties?—A. I did not.

Q. At any time?—A. Not that I remember of now.

Q. In May, 1879, you put on your stage line three times a week?—

A. Whenever the passengers would pay for taking I went three times, and other times only twice a week.

Q. Down to what time was it that you found that your passengers would pay for going three times a week?—A. Well, about the time that I put the mail on.

Q. But you did not pretend to run three times a week in May, did you?—A. Not regularly.

Q. When did you commence running regularly three times a week?

—A. When I commenced carrying the mail three times a week.

Q. When was that?—A. The 1st of August, 1879.

Q. I understood from your testimony that you had been carrying the mails regularly three times a week from the time you first entered into this contract with Dorsey?—A. No, sir.

Mr. MERRICK. Oh, no.

Mr. HINE. I thought he said that. I may have got it from Mr. Bliss's speech.

Mr. MERRICK. He said he carried it on the same time from Loup City to Kearney.

Mr. HINE. We will pass that.

Q. You did not go on the route regularly three times a week until the 1st of August, 1879?—A. No, sir.

Q. When you run your stage line once a week in what time were you in the habit of going from Kearney to Loup City?—A. I was in the habit of taking twelve or thirteen hours. I did not go by Cedarville, remember. I went straight there the way I had always done.

Q. But you knew that Cedarville was on this route?—A. I did.

Q. Why did you not run that way?—A. Because I could not.

Q. Did you communicate that fact to these other parties?—A. I did.

Q. When?—A. I do not know the date of the letter. I also wrote and tried to have them get this post-office at Cedarville put on to another route.

Q. It took, you say, ten horses and five men to carry it from Kearney to Loup City, without going to Cedarville?—A. No, I did not say so.

Q. If you had gone to Cedarville on this thirteen or twelve hours' time, how many more horses would have been required?—A. I could not have gone that way at all, because there was no road.

Q. Give us your estimate, as a practical man, of what number of men and horses would have been required to have carried the mail three times a week over that route on a schedule of thirteen hours by way of Cedarville?—A. If there had been a road eight horses would have done it.

Q. But as it was? We are not asking about roads. Just answer candidly.

Mr. BLISS. He told you he could not do it because there was no road.

Mr. MERRICK. Let him answer it candidly.

Mr. HINE. He has carried the mail around there.

Mr. BLISS. Your honor, I object to this. The witness has sworn that there was no road from Fitzalon to Cedarville. Now, he is asked how many horses it would take to carry the mail by that way which he says it could not go; and he is told that he is not answering frankly.

The COURT. I think the witness is not contumacious. He has answered according to the fact. He has told that it was necessary in order to get to Cedarville that he should first go to Loup City, and then go out on an angle sixteen miles, and only count it one way.

Q. A road could have been made, could it not, from Sweetwater to Cedarville?—A. Yes, sir; a road could be made.

Q. And without any very great expense, could it not?—A. It would not cost as much as it would to build a tunnel through the mountains go over.

Q. The department advertised the route that way, did it not?—A. Suppose it did.

Q. Don't you know it did?—A. Yes; I know it did.

Q. And you contracted to carry it that way, did you not?

Mr. BLISS. What way do you mean?

Mr. HINE. By way of Cedarville. From Kearney to Prairie City and then to Sweetwater, and then to Cedarville, and then on toward Loup City; was not that the way you made your contract?—A. Yes sir.

Q. You knew that country at that time, did you not?—A. I did.

Q. You made your contract that way because the Post-Office Department required it, did you not?—A. I never have been supplying that way; but that is the way I made my contract.

Q. What would have been your estimate at that time to carry the mail by way of Cedarville? Perhaps you would have had to put horses on top of each other to get it over the mountains. I do not know.—A. If I had had to take the trouble to make a road so that I could have gone with the mail, I could have carried it with eight horses.

Q. In thirteen hours?—A. Yes, sir.

Q. That would have been sixty-four miles, you say?—A. Yes, sir.

Q. It would have been about five miles an hour.

The COURT. It would not have been sixty-four miles if he had made a road and gone that way. It was sixty-four miles by going first to Loup City and then out.

Mr. HINE. You see, your honor, how important it is that we should repeat these things occasionally; it would have been eight miles that way, instead of sixty-four.

The COURT. Not counting one way. He only counts one way. He chose to go by Cedarville going out. They have no right under such contract as that to charge both ways.

Mr. INGERSOLL. Does not the court see that in order to get to Kearney from Cedarville, he would have to go to Loup City?

The COURT. Certainly.

Mr. INGERSOLL. Certainly, in the long run it would make a difference of thirty-two miles.

The COURT. That is not the way he figured his contract.

Mr. BLISS. He would not be required to do it, either, because the return trip from Cedarville to Loup City was the return of the mail going back to Kearney.

The COURT. That is what you say now; but the witness has not said that.

Mr. BLISS. That is the way it is.

The COURT. He counts it one way because his contract requires him to go by way of Cedarville.

Mr. HINE. I will demonstrate by the witness that he does exactly the opposite of what Colonel Bliss says, and I will do it now.

Q. When you went to Cedarville you went by Loup City and down to Cedarville, giving them one mail, and then you took up the mail from Cedarville and went back to Loup City, did you not?—A. I did.

Q. So that Cedarville only got one-half of the mail facilities that would have had if you had taken it in both ways, did it not?—A. I went there enough to give them their regular mail just the same as they get it anywhere else.

Q. But if you had stopped there both ways, then they would have got twice the facilities you gave them, would they not?—A. They would when I only went once a week.

Q. Would not they if you went twice or three times?—A. No, sir.

Q. Take as an illustration Sweetwater. You went through Sweetwater and left a mail, did you not?—A. Yes, sir.

Q. And took up what they had there and went on to Loup City?—A. Yes, sir.

Q. That was on Monday, say. Then you went on to Cedarville, and while you were going down there another party came down to Kearney, did he not?—A. Yes, sir.

Q. So that you gave at least twice the facilities in that way that Cedarville had, did you not?—A. If you figure it that way it would amount to the same thing.

Q. Look at it in any other way. In going from Kearney to Loup City you went down to Cedarville, left a mail and went back?—A. Yes, sir.

Q. Now, if you had gone up through Cedarville you would have left a mail and taken one in going to Loup City?—A. I would have left one and taken one.

Q. You would have to come back through Cedarville?—A. I would have to take one, provided there was any there.

Q. You would have given them that facility, would you not?—A. Yes, sir.

Q. So they would have had twice the mail facilities in that way?—A. I presume they would.

The COURT. It amounts to just this: That if Cedarville had been on the line of the road he would have had to pass it both going up and coming down; but as it was off the line of the road sixteen miles he only passed it in going one way.

Mr. HINE. It was on the line of the road absolutely. This is an incorrect map they have brought here. Cedarville was on the line of the road, as it was advertised and contracted for.

The COURT. He says there is no road.

Mr. HINE. It was his business to make one.

Mr. BLISS. Was it Peck's business, or Vaile's business?

The COURT. What do you propose to make out of this anyway?

Mr. HINE. They make a claim here that Mr. Peck's affidavit was erroneous, and we want to demonstrate, as we will before we get through, that the affidavit was not erroneous.

The COURT. He has sworn not only to the number of men and horses that were required to go from Kearney to Loup City for the service three times a week, but also the number that would be required to go from Loup City to Kent, and then he has told you how many it would require in consequence of his going out to Cedarville. He has told you how many it would take, provided he had made a road and taken in Cedarville, on the road from Kearney to Loup City. Now, you have his opinion about it. If he had made that road he says it would have taken eight horses.

Mr. TOTTEN. How many would it have taken if he had not made the road?

The COURT. He has told you how many it did take.

Mr. TOTTEN. The law has laid down the route from Loup City to Kearney by way of Cedarville.

Mr. BLISS. And the Post-Office Department directed him to go to Fitzalon, which rendered it impossible for him to go from Sweetwater to Cedarville, as he says.

The COURT. There must be a limit to cross-examination somewhere. The object of the cross-examination is to get at the intelligence and the memory and integrity of the witness after you have cross-examined him upon the principal subject. It seems to me that you have now exhausted the matter.

Mr. HINE. I will take no more time than is necessary and is required by the interests of my clients.

The COURT. So far as it is a direct cross-examination relating to the subject of the examination-in-chief you have all the answers from this witness that it is possible to get according to the route as it is in the contract. Questions have been put in every form in which your ingenuity could put them.

Mr. TOTTEN. Your honor, it seems to me that this is a question of the value of the respective opinion of John M. Peck and this witness.

The COURT. Very well. You have the opinion of the witness.

Mr. TOTTEN. No; we have not found out from him how many horses and men it would take, provided he had carried out the line provided by the contract.

The COURT. He told you if he had made the road it would have required eight horses and two men.

Mr. TOTTEN. But when the contract was made there was no supposition of that sort. Now, I say how many would it have taken? If he was to go over mountains he might have a man every six feet, and have the mail bags pitched from one to another. In that case John M. Peck's estimate would have been too small. It is not a matter of settling the question of veracity between the two men. The value of their opinion is what I am after; whether this man knew best or whether John M. Peck knew best.

The COURT. You have got his opinion.

Mr. TOTTEN. I beg your pardon. He said he could not go there.

The COURT. When Peck made his affidavit showing the number of men that were necessary to comply with the contract, was it made with reference to a road that was never made, or to the road as it was traveled in fact?

Mr. TOTTEN. It was made February 1, 1879, soon after the contract was made. The date of the paper is the 1st of February, 1879. In carrying those mails you know they are carried over mountains and valleys and all that.

The COURT. He swears it would take so many men and so many horses to do it.

Mr. TOTTEN. How many men and horses would it have taken to have carried the mail from Sweetwater to Cedarville, is all we want. He says, "If I had made a road it would be so and so." I say, if he had had a railroad there it would not have taken any.

The COURT. He says he did not carry it that way.

Mr. TOTTEN. But he ought to have carried it that way. He is impeaching the testimony of a dead man. He could have carried it over the mountains, your honor.

Mr. BLISS. It will save time to let him answer the question, and so we will withdraw the objection.

The COURT. I understood he had answered it.

Mr. MERRICK. I think he has time and again.

Mr. TOTTEN. Oh, no; he has not tried to answer it. He said he could not do it.

The COURT. If I ever heard anything in my life, I heard his answer to the question.

Mr. TOTTEN. He said he could do it in another way.

The COURT. He said positively that if he had made a road it would have taken two men and eight horses.

Mr. TOTTEN. Suppose he had not?

Mr. BLISS. The oath of Peck is as follows:

The number of men and animals necessary to carry the mails on route 34149, from Kearney to Loup City three times a week, on the present schedule, is two men and four animals. The number necessary to carry the mail on that part of said route on a schedule of thirteen hours three times a week is six men and fourteen animals.

The COURT. Put your question any way you please, either according to the way that the mail was carried, or according to the way that it might possibly have been carried if the contractor had made a road, or according to what would be required if there was no road at all.

Q. Taking the condition of this route at the time it was let by the Government to these parties, or at the time when they required it to be carried three times a week on any schedule you please, taking in Cedarville up through from Kearney and Sweetwater, how many men and animals would have been required?—A. I could have carried it with eight animals and four men.

Q. At that time?—A. At the time I contracted.

Q. On what schedule?—A. On the schedule of thirteen hours.

Q. How many miles was it?—A. I told you once or twice.

Q. Tell us once more.—A. It is about sixty-six miles, not including Fitzalon.

Q. If you include Fitzalon how many miles would it be?—A. It would necessitate me to travel twelve miles further.

Q. So that if you took in Fitzalon you would have to go seventy-eight miles, would you, to go from Kearney to Loup City?—A. I would have to go from Sweetwater to Fitzalon, and back to Sweetwater.

Q. You would have to travel, to take in Fitzalon on the route, from Kearney, through that direction and Cedarville, to Loup City, seventy-eight miles, would you?—A. About that; yes, sir.

Q. Now, how many men and animals would it require to go over that distance three times a week on a schedule of thirteen hours?

Mr. BLISS. I object, because the oath does not relate at all to the route by way of Fitzalon. Fitzalon became connected with the route months after the oath was made. It was not in the original contract. I object further to any question looking to the number of men and animals that would be necessary going to Fitzalon and back and out to Cedarville. They must leave Fitzalon out.

Mr. HINE. Fitzalon was put upon that route, as Mr. Bliss stated in his speech, before the route was first carried; before July 1.

Mr. BLISS. It was not put upon the route as early as the 1st of February, 1879, when Mr. Peck swore to his affidavit, I think.

Mr. HINE. That order is in September, 1878, and Mr. Bliss has stated in his opening speech that before any service was performed on that route Fitzalon was added to it. He now states to the court and jury that Fitzalon was not added when Mr. Peck filed his affidavit. I am amazed. One statement or the other must be a mistake.

The COURT. We will get at the fact in a minute.

Q. On a schedule of thirteen hours and a distance as you now state of seventy-eight miles, how many men and animals would be required to carry it three times a week?—A. Eight horses and four men.

Q. On the schedule of thirteen hours?—A. Yes, sir.

Mr. BLISS. [After referring to record.] I am mistaken. Fitzalon was added from the 1st of July, 1878. The pay was added from that time.

Q. That would be about six miles an hour, would it not?—A. I could have done it.

Q. How many stations would you have to have in that distance to carry it six miles an hour, seventy-eight miles?—A. I would have to put my horses out on the road where there were houses already made and get them kept.

Q. How often would you have to have relays of horses?—A. I would divide them up.

Q. How frequently? Would you not have to have relays of horses every ten miles?—A. No, sir.

Q. About how often?—A. About every fifteen miles.

Q. And how many horses would you use?—A. I could have done it with eight horses.

Q. How many horses between each station?—A. One.

Q. How would you carry the mail?—A. I might carry it on horseback.

Q. Six miles an hour on horse back?—A. I might.

Q. Did you ever do it in your life?—A. Yes, sir.

Q. When?—A. Lots of times.

Q. For how long a time?—A. It depends on what mail you mean.

Q. For how long a time?—A. I have been carrying it that fast pretty near ever since I have been carrying it, in some places.

Q. On horseback?—A. Yes, sir.

Q. Where?—A. From Loup City to Cedarville.

Q. Sometimes there is no mail there?—A. Sometimes there is no mail there.

Q. You have been carrying it on horseback at the rate of six miles an hour?—A. Almost always, and sometimes more than that.

Q. How much mail was there frequently from Kearney to Loup City?—A. At that time it never averaged over one hundred pounds.

Q. Would it not very often be five or six hundred pounds?—A. No, sir.

Q. Two hundred pounds?—A. No, sir.

Q. Was there not considerable through mail and public documents going up there?—A. Not at the time the three trips a week commenced. Since then it has increased.

Q. To what extent?—A. It now weighs, probably, from two hundred to three hundred pounds.

Q. You say, at the time these trips were added, it would not average more than one hundred pounds?—A. No, sir.

Q. Would it average one hundred pounds exactly?—A. I do not think it would.

Q. Was it frequently more than one hundred pounds?—A. No, sir.

Q. You did sometimes have a hundred pounds to carry?—A. I never weighed it, but I don't think ever more than that.

Q. That was up to the time it was increased to three trips a week?—A. Yes, sir.

Q. And yet you tell the court and jury that you could take that mail on horseback over that entire route?—A. I did not say I would take it the whole way on horseback. Shall I tell you how I would do it?

Mr. BLISS. Tell us.

The WITNESS. I would go thirty miles of the way with a team of two horses and the balance on horseback. From that point on it would not weigh probably ten pounds.

Q. What point do you mean?—A. Sweetwater.

Q. Then you would start from Kearney with a double team?—A. Certainly I would.

Q. How far would you drive that double team at the rate of six miles an hour?—A. I would drive that team for thirty miles.

Q. And repeat that day after day?—A. I would not be obliged to. I did not say I would use the whole of those eight horses every day.

Q. You would make that trip, say three times a week, drive a pair of horses thirty miles one day, and go back the next day, would you, over that thirty miles?—A. Yes, I would do it that way.

Q. So that you would make those two horses travel thirty miles a day, at the rate of six miles an hour, six days in a week, year after year?—A. No, sir.

Q. How many horses would you need?—A. Only two at a time. I would change them.

Q. How many horses would you have to make a change?—A. I would have two more to make a change.

Q. Then you would have four horses?—A. If I wanted them I would yes.

Q. Would you need them?—A. Sometimes I would, and sometimes I would not.

Q. You would have to have that many to carry this mail continuously and regularly?—A. I would have to have two horses; but they would not have to be the same two horses all the time.

Mr. HINE. If your honor please, as it is now about the time for adjournment, we will get our papers together and finish the cross-examination in the morning.

The COURT. Oh, no; I want to finish this witness now. If you go until morning you will take a fresh start and go over the whole ground again.

Q. Now, you have got, according to your estimate, four horses between Kearney and Sweetwater. You say that the mail from Sweetwater to Loup City would not have averaged but a few pounds a day?—A. No, sir.

Q. How long has that been the case there?—A. It has been the case until this present spring.

Q. Did you go by horseback from Sweetwater to Loup City?—A. No, sir.

Q. You went by stage?—A. By stage.

Q. Now, going six miles an hour from Sweetwater, how many relay stations would you have to have?—A. I am talking about going by Cedarville now. I would go by horseback, and I would have four horses to do it.

Q. The distance would be sixty-eight miles?—A. No matter how far it might be.

Q. How many men would you have between Kearney and Sweetwater?—A. I would not have any, only the man that drove the stage.

Q. If you had four horses you would need more than one man?—A. I never said I would have four horses there.

Mr. MERRICK. Of course he never said it.

Q. Give us your opinion candidly. If you had the mail to carry from Kearney to Sweetwater, a distance of thirty miles, at the rate of six miles an hour, how many men and animals would it take, remembering that there are heavy fines and heavy deductions if you fail on the time?

Mr. BLISS. I object for this reason: The statute says stock and carriers. If the question had any pertinency it should be confined to

stock and carriers. Men are not included, except as carriers, and, therefore, you cannot include hostlers and everything of that kind.

The COURT. That is what he means—how many horses and carriers.

Mr. INGERSOLL. It never has been based upon that calculation in the Post-Office Department.

Mr. HINE. It says stock and carriers.

Mr. INGERSOLL. For sixty years there has never been such a calculation made in the department.

Mr. BLISS. The statute has only been in existence twenty-five years, I think.

Mr. INGERSOLL. There has been no such calculation made as that even under this administration, and there will not be.

Mr. BLISS. I presume there will not be. There is no expedition under this Administration.

The COURT. The law says :

No extra allowance shall be made for any increase of expedition in carrying the mail, unless thereby the employment of additional stock and carriers is made necessary.

Mr. HENKLE. Here is the affidavit on which the complaint is made, referring to the number of men and animals.

The COURT. Put your question, Mr. Hine; we know very well what a mail-carrier is.

Mr. HINE. Stock is a comprehensive term used in the law, and means anything that promotes one's business. It means a man's equipment for carrying on his business, whether groceries or furniture, or whatever it may be; that is, for which capital may be expended. That is stock as known in the law. It is not stock as known on the Exchange in London or the stock board in New York.

The COURT. You do not mean Wall street stocks. I do not need any argument to convince me. It means horses or anything employed in carrying the mail.

Q. There seems to be a little misunderstanding here as to what you meant when you spoke of the number of animals required. We will go back again and I will try and take your answer and stop upon that. Would you not have to have in going six miles an hour relays of horses less than fifteen miles apart?—A. I have driven lots of times clear through the whole forty-eight miles, week in and week out, with the same two horses.

Q. Could you follow that up by the year at the rate of six miles an hour?—A. Not with the same two horses.

Q. Now in carrying the mails from Kearney to Sweetwater, a distance of thirty miles you say, during a period of four years, would you not have a station half way, driving a team every fifteen miles?—A. I never have, sir.

Q. How did you drive your horses even at the rate of forty-eight miles and thirteen hours?—A. I always used four horses to go the forty-eight miles in. I had a station in the middle.

Q. Did you work yourself?—A. I did, sir.

Q. Did you drive yourself?—A. I did, sir.

Q. Did you count your own service in what you estimated for men and animals?—A. I did, sir.

Q. So that you would carry the mail alone, would you?—A. I did, sir.

Q. From Kearney to Sweetwater?—A. From Kearney to Loup City—

Q. Does it often happen that a horse gets disabled and is sick?—A. Oh, yes.

Q. Then how many extra horses would you have in going at the rate

of six miles to supply the absence of such horses?—A. I have told you that I have used ten horses. That has been the most I have used on that whole line from Kearney to Kent exclusively.

Q. How many of those horses did you use on Loup City to Kent?—A. Sometimes one and sometimes two.

Q. Did you have a herd of horses of your own?—A. No, sir; only what I told you.

Q. How many horses did you have or did you own during that time?—A. I have owned a good many different horses in the last five years.

Q. Since the 1st of July, 1878, how many horses have you used on that route?

The WITNESS. Different horses?

Mr. HINE. Yes.

A. I cannot tell you, sir.

Q. A hundred?—A. I don't think I have, though I may have used a hundred. When I found one would not answer my purpose, I would sell it and buy another.

Q. How frequently would your horses get disabled?—A. I never have had any horse to get disabled, for I never would allow them to.

Q. Did you trade them off?—A. I traded them off. That is the way they do out West.

Q. Did you not desire this route to be expedited to thirteen hours?—A. I did not, sir.

Q. You circulated the petition, did you?—A. I did.

Q. You intimated here that you did not desire it to be known that you were circulating the petition?—A. No, I didn't say so.

Q. Did you circulate it yourself?—A. I had a hired man of mine circulate it part of the time, and some of the time I did.

Q. Was that hired man the man who was your carrier sometimes?—A. Yes, sir.

Q. How many men did you have employed as carriers?—A. I had one man and a boy.

Q. Then, there were three of you carrying the mails, were there?—A. That is what I said.

Q. No, more?—A. No, sir; not at one time. There may have been more at different times.

Q. Who took care of your horses?—A. Sometimes one man and sometimes another.

Q. Did one of those three take care of your horses?—A. They always took care of the horses wherever they staid with them.

Q. And when they did not stay with them, who took care of them?—A. They staid with them every night.

Q. When a carrier left the station who took care of the horses?—A. I had a man and paid him so much a week for taking care of them.

Q. How many men did you have of that kind?—A. One.

Q. Only one?—A. Only one. I only had one station, sir.

Q. But you had to have somebody at Loup City, did you not?—A. I did; yes, sir.

Q. Did you not have to have one also at Kearney?—A. No; the driver took care of his own horse at Kearney.

Q. That made four that you had in that service?—A. I think I testified that way this forenoon.

Q. The way you testified was that you had four men in that service?—A. That is what I did.

Q. How many horses would it take now, on a schedule time of sixty hours, just carrying the mails?

The WITNESS. Sixty hours to go where?

Mr. HINE. That is the time from Kearney to Kent; once a week?

A. Well, I have told you that I used five horses.

Mr. INGERSOLL. He did not go on that schedule. Ask him on a schedule of sixty hours, three times a week.

The WITNESS. I do not know, sir; I never done that way.

Q. It would require, then, as many horses to go on a schedule of sixty hours as on a schedule of thirteen hours; on a schedule part of the way to Loup City, thirteen hours, to a balance of thirty-four hours?

—A. I do not think I understand the question.

Q. You never tried to carry it on that schedule of time, and you do not know how many it would take?

The WITNESS. Sixty hours three times a week.

Mr. HINE. No; once a week.

A. I always carried it on that time when I went clear through; when I went once a week I carried it sixty-eight hours.

Q. How many horses would it take on a schedule of thirty-six hours from Kearney to Loup City?—**A.** In thirty-six hours it would require two horses. I do not mean around by the way of Cedarville. I am not talking about that.

Q. It had been a matter of considerable conversation between you and other parties about this schedule of thirteen hours?—**A.** Never—

Q. [Interposing.] You never heard of it until a short time ago?—**A.** Not until I was ordered to supply it three times a week. That is the first I knew anything about it, sir.

Q. When was that?—**A.** I was notified in July, 1879.

Q. And then what did you learn as to this expedited service?—**A.** I did not learn anything about it, only that I had to carry it in thirteen hours.

Q. From whom did you get that information?—**A.** I got that from John M. Peck.

Q. Did he send you a circular from the department?—**A.** He sent me a letter. He sent me a blank, and filled out the schedule.

Q. So you did know at the time the trips were increased to three times a week that you had to carry that on thirteen hours' time?—**A.** That is what I found out.

Q. That was in 1879, July 1?—**A.** Yes, sir.

Q. Did not the postmasters on either end of the route also receive circulars from the Post-Office Department in reference to it?—**A.** I do not know; I do not know whether they did or not.

Q. Was it not a matter of conversation between you and them in reference to it?—**A.** I took this circular that I got from Peck, and went to them to try to get the time extended to a longer time.

Q. Longer than thirteen hours?—**A.** Yes, sir.

Q. You say you were carrying it on thirteen hours?—**A.** I say I was carrying it by Kearney to Loup City.

Q. I am speaking of Kearney to Loup City.—**A.** I always carried it in thirteen hours.

Q. I understood you never learned from the department that it was required until quite recently?—**A.** I did not say so. I never learned that it was expedited, and I did not learn of them getting extra pay until quite recently.

Q. But you were advised by Peck that from July 1, you would have to carry it on a schedule of thirteen hours?—**A.** Yes, sir.

Q. Then had it not been a matter of conversation between you and

persons at Loup City and elsewhere that you would get that route expedited to thirteen hours?—A. No, sir.

Q. Had it not been a matter of conversation between you and Messrs. Hale and Nightingale, your attorneys?—A. No, sir.

Q. Do you know the handwriting of Mr. Nightingale?—A. I do.

Q. [Submitting a paper to witness.] Is that his handwriting?—A. [After examining the same.] That is his handwriting, or something like it.

Q. He has signed your name to it, has he?—A. Yes, sir; he has signed my name to it.

Q. I understood you to say that that was right then?—A. I have not said it was right yet.

Q. Now just tell us whether Mr. Nightingale had any right to sign your name to that?—A. Well, I presume he had, or he would not have done it.

Mr. HINE. I will read this letter to the jury.

Mr. BLISS. Allow us to see it first. [After reading same.] We have no objection to it at all. We do not know that it is the proper time for it to come in, but we make no objection to it.

Mr. HINE. [Reading:]

LOUP CITY, NEBRASKA, *January 23, 1879.*

JOHN M. PECK, Esq., *Washington, D. C.:*

DEAR SIR: I hereby present for your consideration the following schedule, and earnestly request that you procure the adoption of the same in connection with the increase of service on mail route No. 34149; the following-named places to be supplied three times a week, to wit:

Mr. BLISS. That is dated when?

Mr. HINE. It is dated January 23, 1879, some eight or nine days before Mr. Saunders indorsed that petition to the department—some week and a half before—just a little more that time enough for it to be sent out from Nebraska.

From Kearney, thence to Prairie Centre, thence to Centennial, thence to Sweetwater, thence to Fitzalon, and thence to Loup City.

The said mail to start from Loup City on Monday, at 7 o'clock a. m., and arrive at Kearney on the same day at 8 o'clock p. m.—

Just thirteen hours precisely.

The WITNESS. That is all right.

Mr. HINE. What do you mean is all right?

The WITNESS. That letter is.

Mr. HINE. Did you authorize it?

The WITNESS. I did.

Mr. HINE. You knew of that at the time?

The WITNESS. I requested that—

Mr. HINE. [Interposing.] You requested that it should be expedited.

The WITNESS. No, sir.

Mr. HINE. But he says expedited to a schedule of thirteen hours.

The WITNESS. I did not request it.

Mr. HINE. But your contract spoke of it, did it not?

The WITNESS. My contract did.

Mr. HINE. [Resuming reading:]

Then leave Kearney on Tuesday at 7 o'clock a. m., and arrive at Loup City on the same day at 8 o'clock p. m. Then leave Loup City on Wednesday, at 7 o'clock a. m., and arrive at Kearney at 8 o'clock p. m. on the same day. Then leave Kearney on Thursday at 7 o'clock a. m., and arrive at Loup City at 8 o'clock p. m. on the same day; then leave Kearney at 7 o'clock a. m. on Saturday, and arrive at Loup City at 8 o'clock p. m. of the same day.

The above is just as we would wish to have the route, and will be more convenient than adopted in any other way.

I am, yours, truly,

C. H. FRENCH.

Q. That is your name?—A. That is my name, sir; but that is not requesting them to give the whole length of that route, as advertised.

Q. What do you mean by that?—A. I mean going from Loup City to Cedarville, and so on, to Kearney. That is only speaking for forty-eight miles of that distance.

Q. Well, this is a schedule of thirteen hours as you carried the mail, is it?—A. That is the way I have carried it since.

Q. Then you were making efforts to get that reduced to thirteen hours?—A. I was making efforts to get it so that I could go lawfully the way that I did go; and if the balance of that letter—the other sheet—had been there you would have seen——

Q. [Interposing.] I will just hand you this letter. [Submitting same.] Is there any other sheet to that letter?—A. There was another one—there could be another one just like that put in the same envelope. .

Q. Could be! But was there?—A. I do not say that there was; but I do say that there were other things pertaining to that matter. I was writing to Mr. Peck in regard to having Cedarville taken off of that line.

Q. Then you did not mean to have this go alone?—A. No, sir; I did not.

Q. It did go alone though, did it not?—A. I do not know whether it did or not.

Mr. HINE. There is no use having any controversy with you about it. I will just hand it to the clerk to be marked.

[The paper was submitted to the clerk, and was by him marked 42 A.]

Mr. HINE. I guess we will get our papers a little more together, your honor, if we have until to-morrow morning to finish this cross-examination.

The COURT. I am going to finish this cross-examination before we arise.

Mr. HINE. Very well.

Q. [Resuming.] It seems there were some deductions. Did you carry the mail through regularly on a schedule of thirteen hours?—A. I carried it the way I traveled always thirteen hours, with very few exceptions, and that was a year ago last winter.

Q. In muddy weather or in considerable snows, you would take a longer time?—A. Never in muddy weather. But a year ago last winter the snow and the water got so that we could not get along at all.

Q. Unless you felt compelled to take the mail over that route in thirteen hours, you would have taken a longer time?—A. I always made it in thirteen hours until a year ago last winter, or less; that is, forty-eight miles, I mean to say.

Q. You had a line of stages there you have told us. Now, was it your object in taking this contract to carry the mail or passengers?—A. My object was to make a business of both of them.

Q. Carrying express packages also?—A. Certainly.

Q. Carrying that on a schedule of thirteen hours, was it not as necessary that passengers should be carried at that rate as that the mail should be carried at that rate?—A. Certainly.

Q. Carrying the mail out to Loup City you started from Kearney in the morning at 7 o'clock?—A. Yes, sir.

Q. And got to Loup City at 8 o'clock in the evening?—A. Eight o'clock or before that.

Q. Then you received the mail at Loup City at 7 o'clock the next morning and returned to Kearney?—A. Yes, sir.

Q. Now, that gave the citizens there practically a mail every other day?—A. Certainly.

Q. Did not that give them better mail facilities than it would to have run the mail on a schedule of thirty-six hours going over the ground six times a week?—A. I suppose it did.

Q. Did it not give them better mail facilities than it would to run it six times a week over a period of twenty-four hours.

Mr. BLISS. I am going to object to this. As to what would have been done six times a week, there is no six times a week in this case. We must get through some time.

Mr. TOTTEN. I should think brother Bliss would be anxious to have this examination close.

Mr. HINE. In this opening, and in the theory, as they laid it down here, it is claimed that there has been a waste of money because routes have been expedited, not that trips have been added. They say that was all right; we should give them trips. I propose to demonstrate that there are better mail facilities given by going three times a week on a schedule of thirteen hours than it is to go six times a week on a schedule of twenty-four hours, and it not costing more than two-thirds as much.

Mr. BLISS. I never have said that there was not an impropriety in the addition of trips. I never said that on this route we made no question of the propriety of the addition of trips and of payment under it to some extent. We do question upon this route the propriety of Mr. Brady's order for expedition. And now, to go into a question of six trips a week is not pertinent to any question here.

The COURT. The petition, before it was changed, as you allege, was for an increase of service?

Mr. BLISS. Three trips specified.

The COURT. Three trips a week?

Mr. BLISS. Yes.

The COURT. And, as you allege, it was changed for not only an increase of service, but for expedition also.

Mr. INGERSOLL. The court will see that there could not be three trips a week at that rate in that way.

The COURT. Then the petition is inconsistent with itself?

Mr. INGERSOLL. Yes, it is inconsistent. Thirty-six hours, three times each way, will make more than a week.

Mr. CARPENTER. It will make a week and a half.

The COURT. It has not been established yet whether this change was in the paper before or after, and for that purpose, and in that view, I will permit Mr. Hine to ask this question.

Q. [Resuming.] Would it not give better mail facilities to go on a schedule of twenty-four hours three times a week in thirteen hours than it would to go on a schedule of six times a week in twenty-four hours?—A. I can answer for one of them that it was not. I would rather have it six times a week in twenty-four hours than three times a week in thirteen hours.

Q. It was twenty-four hours to pass from Kearney to Loup City Monday?—A. Yes, sir.

Q. And then you would go back from Loup City to Kearney on Wednesday, would you not?

The WITNESS. At three trips a week ?

Mr. HINE. At six trips a week you would go back on Tuesday.

The WITNESS. At three trips a week I would go back on Tuesday. It would always go there on the same day. It would always be done in twelve or thirteen hours. It always has done it.

The COURT. In making that distance, no man would choose to take all day and all night.

The WITNESS. No; I would not.

The COURT. If he had twenty-four hours to do it in he would do it in twelve or thirteen hours ?

The WITNESS. Yes, sir.

By Mr. HINE :

Q. Would it not be very much cheaper in going forty-eight miles to take sixteen hours for it at least, than it would to go the forty-eight miles in twelve hours ?—A. It would have been a year ago, last winter a great deal cheaper for me.

Q. Would it not be much cheaper at any time, and under any circumstances ?—A. No, sir.

Q. Then a horse will go four miles an hour, including stoppages and all, as easily going forty eight miles as he will to go forty-eight miles at the rate of three miles an hour ?—A. I say that I could, and have always made it in a day, with three times a week service. I never used but four horses to make the trips, but I had two extra ones.

By Mr. WILSON :

Q. You filed your subcontract in February last, I think you said ?—A. Yes, sir.

Q. Were you aware before that time that authority existed to file a subcontract ?—A. I was.

Q. But you did not see fit to file it ?—A. I did not file it.

Q. You do not know that General Brady ever saw your subcontract, do you ?—A. He never saw mine to my knowledge.

Q. You don't suppose he ever heard of it ?—A. I do not know anything about it.

Q. How about Mr. Turner, do you know of his ever having seen it ?—A. I never knew anything about him until since I came to Washington.

The COURT. Are you through with the cross-examination ?

Mr. WILSON. If it were not for wearying the court I would like to ask him one or two questions about this matter of men and animals.

The COURT. You can ask him. It is a subject that has been very much examined.

Q. Suppose you had no stage line at all on this route, and were not carrying passengers, or express packages, or anything of that kind, but you were simply going to take a contract for carrying this mail from Kearney to Kent, and to go through with the mail from Kearney to Kent, as it then was in sixty hours; how many men and horses would you use for that purpose ?—A. I have stated that I would use and did use five.

Q. But that was when you were carrying passengers, as well as mail ?—A. Yes, sir.

Q. Now, please observe my question. If you will notice it carefully you will have no confusion about it, or if there is any, it will be my fault and not yours if you answer what I ask. I will suppose that you have not got a stage in the world.—A. I understand that.

Q. You are not going to carry any passengers or any express, but

you are simply going to carry that mail from Kearney up to Kent in sixty hours once a week. You understand that?—A. I do.

Q. Very well. Now, you are going over the precise track that is marked out by this advertisement upon which this contract was let.—A. Yes.

Q. Now, we understand each other. How many men and animals would it take to carry that mail from Kearney to Kent once a week in sixty hours, without any passengers, and without any express or anything of that sort?—A. In making that statement that is just what I mean precisely; that I could do it with five horses and two men, going the way it was advertised, in sixty hours.

Q. How many would it take going the way you went?—A. I used——

Q. [Interposing.] I am not talking about what you used to do, because you were carrying passengers.—A. I could have taken four. I would have tried it with three.

Q. How far did you say you could carry this mail with one horse—one hundred pounds, I think you said?—A. I said it was never over one hundred pounds when I started.

Q. If I understood you you said you could carry that one hundred pounds with one horse at the rate of six miles an hour?—A. No, sir; I did not say that.

Q. You did not say that?—A. I explained that I would start from Kearney and go to Sweetwater with two horses and a wagon, and from there carry it on horseback.

Q. And then from Sweetwater on you would go with one horse?—A. If I wanted to I would. I do not know how I might have done it. I say I could have done it. I might have taken it on a buck-board, with one horse like thousands of others do. There are different ways.

Q. I want to know now if you are going to travel from Kearney to Kent to carry that mail in sixty hours—you have got sixty hours to do it remember.—A. I understand.

Q. You start from Kearney at one time. I am not speaking about hurrying through, but taking sixty hours to get through. How many horses would you provide to carry that mail from Kearney to Kent in sixty hours over one hundred and ten miles distance?—A. I have told you that I would take five horses and two men.

Q. Let us see how you would use those five horses.—A. I don't know how I would use them. I aint never had to try it.

Q. Now what is the distance from Kearney to Kent?—A. I have told you.

Q. Give us the aggregate distance?—A. It is advertised as one hundred and twenty-five miles.

Q. Now you are going to travel one hundred and twenty-five miles in sixty hours and carry that mail. How many horses would you provide yourself with to travel that one hundred and twenty-five miles in sixty hours?—A. I should provide myself with five.

The COURT. He has answered that question more times than I have fingers on both my hands. I really must interpose and stop that question being put any more. If he can explain his answer in another direction I will allow the investigation to go on; but to put the identical question so repeatedly I think is a waste of time.

Mr. WILSON. If your honor will pardon me, the question was not asked him as to the mail alone. He was examined before, and answered as to his express and passengers and all that. I was trying to limit it simply to the mail.

The COURT. He has told you several times in the form that you have

put your question that he did take two men and five horses. Now, I do not want to be understood as cutting you off from inquiring how he makes his calculation of the two men and five horses. You can test him in that way, but he has given you the answer repeatedly that it would take five horses and two men.

Mr. WILSON. That is just what I was leading up to, your honor. I was going to ask him to explain to this jury how he would distribute these men and animals along this line.

The COURT. I do not want to be understood as cutting that off.

Mr. WILSON. I know your honor does not.

Q. Please state how you would distribute these animals along this route if you were going to use five of them for the purpose of going one hundred and twenty-five miles in sixty hours.—A. I can state how I have used them. I do not know how to state how I would have done it if I had to do it the other way. I do not know what to say about it.

Q. Now you are talking about what you have done.—A. That is what I have been talking about.

Q. And what you have done has had connected with it the carriage of passengers and freight?—A. But I say this, that I could have carried it with the same number of horses and men and went by Cedarville.

Q. Let us get this disconnected from your passengers and from your freight.—A. I will disconnect it.

Q. Will you please state to the court and jury just how you would distribute these horses and these men and use them in carrying this mail?—A. I might have done it in a dozen different ways.

Q. Just give us one. Commence and start out at Kearney with five horses and two men. You are going to use them in carrying this mail one hundred and twenty-five miles in sixty hours. Just describe it to the jury.—A. I don't know how to describe it, because I didn't do it.

Q. If you didn't do it, and you do not know how to describe it, how are you able to fix five horses and two men?—A. I am able to say I think I could do it. I am satisfied.

Q. You are now testifying in a very grave matter and about a very vital point in this case, and I do not want any of your surmises or your guesses. I want something that is tangible and will be instructive to this jury. Please state how you would utilize those five horses and two men. If you can do so I will be very much obliged to you and so will my client.—A. Suppose I left a man at Sweetwater with the team I drove there, and had him take the horses and go out and picket them on the prairie, as thousands of people do. He might turn them loose on the prairie and let them run there.

Q. And when he came back if the horses did not happen to be there how would he get his mail back?—A. I suppose he might turn them into somebody's herd.

Q. Suppose there was nobody's herd there?—A. But there are lots of such herds.

Q. You are not utilizing other people's herds, but providing facilities for carrying the mail.—A. I do not know how to answer your question. You are asking me something I don't know how to answer.

Mr. WILSON. I thought all the time you were answering something you did not know how to answer. With that I am done with you. You may stand aside.

By Mr. HINE :

Q. What was the population of Sweetwater in 1879?—A. At that

timethere was nothing but the post-office there and a settlement. There was no town and there is no town there now.

Q. Is the surrounding country pretty thickly settled?—A. Yes, sir.

Q. How many people probably get their mails from Sweetwater?—

A. I don't know how many.

Q. How many did in 1879?—A. I don't know. There might have been ten and there might have been fifty.

Q. How many got their mails from Sweetwater in 1880?—A. I aint posted in regard to that.

Q. You took the mail there and left it and helped the postmaster distribute it, didn't you?—A. It was not my duty.

Q. But you did it?—A. No.

Q. You saw it distributed?—A. Certainly.

Q. About how many people got their mail there in 1880?—A. I don't know. Sometimes there would be one man there and sometimes eight or ten when I would go by.

Q. How many letters and papers would you leave there generally?—A. I don't know. I took care of my team, and let the postmaster take care of the mail.

Q. Have you any idea how much mail there was in 1880?—A. No, sir.

Q. Or in 1881?—A. No.

Q. Did you leave one-tenth of the mail that you carried along there at Sweetwater?—A. Probably I did.

Q. During 1880 and 1881?—A. I am only guessing at that. I say I do not know.

Q. You did not leave exceeding one-tenth of the mail there did you?—A. I might have left a good deal more than one-tenth of the mail.

By Mr. BLISS:

Q. You referred to this letter in Mr. Nightingale's handwriting, and you started to say, as I understood you, that it did not include Cedarville?—A. No, sir.

Q. What were the facts about that?—A. The facts were that I was writing all the time trying to get Cedarville put on to another route, so that I would not have to supply it. I would rather lose the money off my pay than supply that route. The fact was that I got about 60 cents for supplying it when it cost me about \$3.

Q. And you wrote a letter to supply it, leaving Cedarville off?—A. Yes, sir; and there were letters afterwards in regard to that very same thing.

Q. You were asked whether you ever notified the contractor about side supply. [Submitting a paper to witness.] Will you please look at that letter and say whether you ever received it?—A. [After inspecting the letter.] I did.

Mr. BLISS. I will read now this letter.

Mr. HINE. I object to Mr. Bliss reading that letter.

Mr. BLISS. I offer it for this reason. They asked the question, if he ever notified the defendants about his side supply to Cedarville. I offer this for the purpose of showing a letter from Mr. Peck discussing this question of Cedarville and side supply.

The COURT. This has been offered in evidence.

Mr. BLISS. It has not been offered in evidence yet.

Mr. TOTTEN. Yes; it has.

Mr. BLISS. You are mistaken. I am about to offer it now for the

first time. We did not desire to put it in until the question as to the knowledge of the defendants as to side supply was opened.

Mr. HINE. Pass it down for us to read.

Mr. BLISS. Yes. [Submitting paper.]

By Mr. WILSON:

Q. How long have you been in Washington?—A. I came here, I think, about four weeks ago last Saturday.

Q. Have you been having frequent interviews with parties on the other side in regard to this matter since you came?—A. I have had several talks with them.

Q. With whom have you had talks?—A. With Mr. Bliss, Mr. Merrick, and Mr. Woodward.

Q. You have been frequently in Mr. Bliss's room, up at the department?—A. Several times

Q. And discussed this matter?—A. Yes, sir; I think I have looked the papers over about three times.

Q. How much compensation do you get besides your per diem for your attendance here?—A. I do not know how much I get. I haven't seen any of it yet.

Q. How much have you been promised?—A. I wish I had been promised more than I have.

Q. How much have you been promised?—A. I have been promised \$1.25 a day from the United States Government, sir.

Q. Anything more?—A. No, sir.

Q. By any person?—A. No, sir; not by anybody.

Q. You do not expect to get any more than \$1.25 a day?—A. No; I do not. I will be glad to get that, and get home.

Q. If you get that much you will be satisfied?—A. Yes, sir; you bet.

Mr. BLISS. Have you any objection to the letter, gentlemen?

Mr. HENKLE. Yes. We have not gone into the question of side supply.

Mr. BLISS. In cross-examination they opened the question of whether the defendants had any knowledge of their being side supply, and he said yes, he wrote to them. They asked if the letter was here, and he said he did not know. I put it in evidence for the purpose of meeting any reference to side supplies. That is all there is to it.

The COURT. I do not remember anything about side supplies.

Mr. BLISS. Cedarville was a side supply, and they brought up the question as to whether the defendants knew that Cedarville was supplied by what they call side supply, and I now offer this letter to show that they did.

The COURT. Very well.

Mr. BLISS. [Reading:]

WASHINGTON, October 22, 1878.

C. H. FRENCH, *Loup City, Nebraska*:

DEAR SIR: Every office on a route must be supplied or a reduction will be made, provided the fact that the office has not been supplied is reported. The only way to manage such difficulties as you have is through the local postmasters. You can supply an office once a week by a side supply, provided the postmaster at that office is satisfied, and don't kick. The department will not authorize it, but they will not find any fault unless reported. It is better to send petition for increase to your Senator, but notify us when you have done so, that we may help it.

Truly yours,

JOHN M. PECK, *Contractor*.

Mr. HENKLE. We reserve an exception, your honor. The subject of side supply has not been gone into at all on the part of the defense.

(The letter just read was submitted to the clerk, and by him marked 43 A.)

The COURT. There has been a great deal of discussion about Cedarville, and the fact of getting the mail to Cedarville, when there was no road.

By Mr. BLISS :

Q. As I understand you, from Fitzalon to Cedarville there was no road?—A. There was no road at all unless we came back to Sweetwater.

Q. From Sweetwater to Cedarville there was a road?—A. A track. You would not consider it a road.

Q. Do you know what is the population of Cedarville?—A. It is now about four hundred.

Q. What was it in 1878?—A. Probably not over three hundred.

Q. Are there any other villages on the route from Kearney to Loup City?—A. No, sir.

Q. It is a farming region?—A. Yes, sir.

Q. And is there any collection of houses at the post-office?—A. Oh, yes; there are settlements around there. The houses are not close together. Sometimes the houses are close together, and sometimes quite off.

Q. Did it make any difference as to the number of men that you were to have at a given station, whether you went on a fast schedule or a slow schedule?—A. Why no. That is the way I run my stage and mail. I only had one man to attend to them, and that was half way between Kearney and Loup City.

Q. When you supplied Cedarville the way you supplied it, as I understand it, the post-offices on the route, including Cedarville, had three mails going out and three mails coming in each week.—A. With the exception of Cedarville. That one I went to and stopped there for dinner, and went back to Loup City, three times a week.

Mr. BLISS. Then, that had three mails coming in and three going out?

By the COURT :

Q. I was astonished at your answer in regard to the quantity of mail; that it would take a two-horse vehicle to carry the mail from Kearney to Sweetwater, because of the weight of the mail?—A. No; I said it would probably weigh about one hundred pounds when I started. That would be too heavy to put on a horse with a man, and I said it would take two horses to carry it.

Q. You said that from that on it would not weigh more than ten pounds?—A. Probably it would not.

Q. Was that community much of a place?—A. At the time I commenced there there was but one house. There are probably three or four, twenty or thirty rods apart, now.

Q. That must be a community that takes a great deal of mail-matter if they take nine-tenths of all the mail-matter between Kearney and Loup City?—A. But remember that there was a post-office by the name of Prairie Centre, in a very thickly settled neighborhood, and another at Centennial that took their mail out of the same sack before it got to Sweetwater; and I said that nine-tenths of that mail was out of the sack when I would take it from Sweetwater to go towards Loup City.

Q. There were other points to supply?—A. Before I get through, I want to say that Sweetwater got its mail from Grand Island over a mail route that runs three times a week, before I commenced running; so that I did not have to take very much to Loup City.

By Mr. BLISS :

Q. Loup City gets its mail from another route ?—A. Yes, sir.

Q. How thickly settled is Prairie Centre ?—A. It is very thickly settled ; it is a good sized place, but it gets more papers than it does letters.

Q. How much of a place is Centennial ?—A. It has in the neighborhood, probably, of fifteen or twenty families getting their mails.

Q. And Fitzalon has how many ?—A. At the time I commenced running three times a week, there probably was about four or five families getting their mails.

Q. How many at Cedarville ?—A. At that time there were not over about four or five families there.

Q. Were there any other post-offices than those that have been named between Kearney and Loup City at that time ?—A. No, sir.

By Mr. HINE :

Q. How was it with South Loup ?—A. There used to be a post-office there, but there never has been any office there since I have been on the route.

By Mr. DICKSON. [The foreman:]

Q. This route was originally let from Kearney to Kent. You carried the mail from Kearney to Loup City. Who was the contractor who carried it from Loup City to Kent ?—A. I was the contractor over the whole route.

Mr. DICKSON. I thought he ended at Loup City.

Thereupon (at 3 o'clock and 50 minutes p. m.) the court adjourned till to-morrow morning at 10 o'clock.

WEDNESDAY, JUNE 14, 1882.

The court met at 10 o'clock a. m.

Present, counsel for the Government and for the defendants.

THOMAS S. NIGHTINGALE sworn and examined.

By Mr. MERRICK :

Question. Where do you reside ?—Answer. Loup City, Sherman County, Neb.

Q. Where did you reside in 1878 ?—A. At Loup City.

Q. The same place ?—A. Yes, sir.

Q. How long have you been living there ?—A. I have been living there four years last February.

Q. Do you know Charles H. French ?—A. Yes, sir.

Q. How long have you known him ?—A. About seven years.

Q. I omitted to ask you what your business is. What is it ?—A. I am an attorney.

Q. What is the name of your firm ?—A. My firm is now Nightingale Brothers.

Q. What was it in 1878 ?—A. Hale & Nightingale.

Q. State to the jury whether or not you ever saw that petition before. [Handing to the witness petition marked A.]—A. Yes, sir ; I have seen that before.

Q. State in whose handwriting that petition is.—A. It is in my handwriting, with the exception of a few words.

Q. What are they ?—A. "Schedule, thirteen hours."

Q. How came you to write that petition ?—A. Mr. French brought a petition to me ; that is, a form of petition for me to get a few signers to it, in town, and an ink bottle got spilled over it, and the consequence was I had to copy it ; this is the copy with the exception of those three words.

Q. Why do you say it became necessary to copy it ?—A. On account of an ink bottle being spilled over the former petition that Mr. French handed to me.

Q. Did the original petition read right along, word consecutively following word, or was there a blank left for words ?

Mr. HINE. I object to the question as leading, incompetent, and inadmissible.

The COURT. I think the question is objectionable.

Mr. MERRICK. I will withdraw the question.

Q. Do you know in whose handwriting the petition was that was originally shown to you ?—A. No ; I do not ; still I know—

Mr. WILSON. [Interposing.] If you don't know, that is enough.

The WITNESS. It was very similar.

Mr. WILSON. He don't know, that is enough.

The COURT. You need not go any farther.

Mr. MERRICK. That is enough on that subject for the present.

Q. You were about to say it was very similar ?

Mr. WILSON. That is just exactly what I am objecting to.

The COURT. I understand that.

Mr. MERRICK. I understand it.

The COURT. What do you propose to ask him ?

Mr. MERRICK. I am going on with my questioning.

The COURT. He was proceeding to make a statement which was not involved in your question.

Mr. MERRICK. He was about to say it was very similar.

The COURT. You can put your question, and we will see whether it is proper or not.

Q. Could you, from the appearance of the writing in that petition, identify it as the writing of any man with whose writing you were familiar by correspondence or by having seen him write ?

Mr. HINE. I object to the question. If this witness will state that he has seen the particular individual write so often—not that he has compared handwriting, but has seen him write so often that he can identify the handwriting, it is competent.

The COURT. But a man may become familiar with handwriting by correspondence. He may be able to identify handwriting by correspondence, although he has never seen the writer write.

Mr. HINE. This question will come up repeatedly, and perhaps we had better settle it once for all during the progress of the trial. If you will indulge me for a moment, I will state the reason for my objection. There is no doubt that under the common law there can be no testimony given by a witness predicated of his knowledge of the handwriting of a party unless he has acquired that knowledge by seeing the person write. In other words, he cannot testify in reference to handwriting of an individual from having seen that which is admitted to be his handwriting. That is the rule of the common law. Your honor will recollect that it required an act of Parliament to permit testimony to be introduced in the courts, except the ecclesiastical courts of England, of comparisons of handwriting, or of a witness who had seen repeatedly the writing of parties admitted to be the writing of the particular parties in

question. In many of the States of this country the legislatures have passed acts to that effect ; but in all places where the rule of the common law applies, excepting alone in the admiralty courts, the rule is inflexible that a witness may not testify to handwriting, may not testify to signatures, except from a knowledge he has acquired from actual observation of the party in the act of writing. I will not amplify that, but will simply state it as a legal proposition universally supported.

The COURT. The answer to your argument is simply this, that you assume that what the Supreme Court of the United States has decided is not true.

Mr. HENKLE. Send for 6th Peters, your honor.

The COURT. There was a recent case in the Supreme Court. A merchant, I think it was in Boston, had had correspondence with parties who had resided for many years in the East Indies. The witness called to prove the handwriting of the East Indian merchants had never seen them write, but had been in correspondence with them ; and from his knowledge of the handwriting from that correspondence he was allowed to testify as to the handwriting. This is a sudden question, but I know that that decision was made in the Supreme Court in a recent case much this side of 6th Peters.

Mr. HENKLE. Does your honor remember the volume ?

The COURT. No ; I do not. If I were at my office I could refer to it.

Mr. HENKLE. I think we had better send for the case in 6th Peters.

The COURT. If it is in your favor you can send for it.

Mr. HINE. The statutes control the rules of evidence, of course.

The COURT. But the Supreme Court held that this is a correct rule at the common law, so far as the authority of that court can settle the common law.

Mr. HENKLE. In the case of 6th Peters the Supreme Court expressly said that that was not the common law.

Mr. HINE. And have so stated in 1st Otto.

The COURT. Send for 1st Otto. That is probably the case I want.

[The books were sent for.]

Mr. MERRICK. Perhaps the witness does not know anything about it. We might get his answer, and see.

The COURT. No ; for they object to the question.

Mr. TOTTEN. That is a very modest suggestion. It is like hanging a man first and trying him afterwards.

Mr. MERRICK. I really do not know, your honor, what his answer would be to the question.

The COURT. I do not, of course ; but an improper question is subject to exception. [After a pause.] There cannot be any doubt that the knowledge of handwriting obtained in a correspondence may be proved although the witness has never seen the party write.

Mr. HENKLE. Does your honor mean by that that if a party has corresponded with another he may testify to a handwriting that is in dispute, by comparison ?

The COURT. I do ; yes, sir. I am subject to correction by authority, but that is my decided opinion now in the absence of authority.

Mr. HINE. I will ask the witness if he ever received a letter from the party he is speaking about. Perhaps that will save going further.

Mr. WILSON. We might facilitate this matter by taking a step or two more in the inquiry before the authority comes.

The COURT. I cannot dictate the shape of a question.

Mr. WILSON. Oh, no ; I will ask the witness a question for the purpose of expediting this business. But here comes the authority.

Mr. MERRICK. I think you had better leave the witness with me until I am done with him.

The COURT. You cannot take the witness out of Mr. Merrick's hands.

Mr. MERRICK. [Reading from Abbott's Trial Evidence:]

3d. That he has received letters or other documents purporting to be written or signed by the defendant in answer to communications written by himself, or under his authority, and addressed to the defendant, and has acted on them as such; or if the acts of the witness done pursuant to the letters purporting to have come from a defendant had been ratified by the defendant. *Tilford vs. Knott*, 2 Johnson, 134; *Southern Express Company vs. Thurston*, 41 Miss., 216; *Mapes vs. Leal*, 27 Tex., 345; *Goldsmith vs. Bane*, 3 Halst., 87.

Mr. TOTTEN. This inquiry I understand to be about a paper over which somebody has spilled a bottle of ink. That petition has been destroyed. I presume, your honor, that nobody is to be destroyed by that paper. This is the document that is to do the mischief, if any is done.

Mr. MERRICK. Somebody seems to be very much afraid he will be destroyed by that paper.

Mr. TOTTEN. Oh, no.

Mr. HINE. Oh, no; we simply call attention to what we object to in the evidence, and we take an exception. We want to be fair to the court. That is all there is about it. I will not make a long talk about it.

The COURT. What is the shape of the question?

Mr. HINE. If your honor please, I will read a page from 1st Otto, 270.

The COURT. Oh, not a whole page.

Mr. HINE. Mr. Justice Bradley delivered the opinion of the court. It is the case of Moore against the United States:

The only question of importance is, whether the signature to the document bearing date December 17th, 1863, and purporting to be executed by the claimant, was properly proved. The court compared it with his signature to another paper in evidence for other purposes in the cause, respecting which there seems to have been no question: and from that comparison adjudged and found that the signature was his.

The COURT. That is not the question here.

Mr. HINE. That is not the question here, and that is the reason I call the attention of the court to it. But here is the decision:

By the general rule of the common law this cannot be done, either by the court or a jury.

The COURT. That is by comparison of handwriting. That is not the question in this case. There is no comparison of handwriting here.

Mr. HINE. This party does not pretend that he ever saw the gentleman write whose handwriting he now proposes to identify.

Mr. MERRICK. He has not said that.

Mr. HINE. How can it be done except by a comparison to handwriting?

Mr. MERRICK. He has said nothing about it.

Mr. HINE. But the question is this, whether he has received communications from the party.

Mr. MERRICK. No; that is not the question.

The COURT. No; we have not gone that far.

Mr. HINE. Will the reporter read the question.

Mr. MERRICK. As to that case in 1st Otto, as it may come up again, I will say that the only question I understand that case to have decided is this—

The COURT. [Interposing.] I know what the decision there was.

Mr. MERRICK. Is your honor familiar with that case?

The COURT. Yes.

Mr. MERRICK. Mr. Hine read it, showing that the court cannot compare, but the jury may.

The COURT. No.

Mr. MERRICK. That is the case.

Mr. HINE. Neither the court nor the jury can.

The COURT. That question has not come up.

Mr. MERRICK. It will come up.

The COURT. When it comes up we will consider it.

Mr. HINE. I have excepted to the question, and called the court's attention to it.

The COURT. We would like to have the reporter read what the question is.

Mr. MERRICK. While the reporter is looking for the question allow me to call your attention to a paragraph in this case which may be useful.

But the general rule of the common law, disallowing a comparison of handwriting as proof of signature has exceptions equally as well settled as the rule itself. One of these exceptions is, that if a paper admitted to be in the handwriting of the party, or to have been subscribed by him, is in evidence for some other purpose in the cause, the signature or paper in question may be compared with it by the jury.

The COURT. Yes.

Mr. HINE. Mr Merrick reads a single sentence in the case. I propose to read the opinion of the court.

The COURT. I do not want to hear the opinion of the court, unless it is germane to a point before us.

Mr. MERRICK. We have no such question now before the court.

Q. From having seen any individual write, or from having had correspondence with any individual upon whose letters you acted, did you recognize the handwriting of that petition?

Mr. HINE. Allow my objection to go down to the question as incompetent.

The COURT. I shall overrule that question.

Mr. HINE. That was the question I was trying to except to.

The COURT. But the question had not been put then.

Q. You stated that you did not know in whose handwriting that petition was. Have you any opinion in regard to the subject?

Mr. HINE. I object to that question.

The COURT. I cannot admit that.

Q. Did you recognize at all the handwriting of that petition?—A. Yes, sir.

Q. From what knowledge did you recognize that handwriting?—A. It was similar to a letter that was handed to me with the petition.

Mr. HINE. Wait a moment. "Was handed to me."

The COURT. Now, we are getting at the marrow of the matter. What do you propose to ask next?

Q. Who signed that letter?

Mr. HINE. Ah! Wait a moment.

Mr. MERRICK. That is a blunt question.

Mr. HINE. I don't want to have to keep brother Merrick right. He knows what is competent evidence.

The COURT. If this witness has only received a letter purporting to be a letter from a certain person, and speaks merely from having received such a letter and comparing that letter with this, I do not think he can swear to the handwriting of this paper.

Q. Who handed you that petition and letter?—A. Mr. Charles E. French.

Q. What became of the letter?—A. The letter was lost, I believe. I have not seen it since.

Q. Was it addressed to you?—A. No. It was addressed to Mr. French. I was doing business for him as his attorney at that time.

Q. Was that the only letter you ever saw that was in that same handwriting?—A. No, sir; I have seen quite a number of them.

Q. Where?—A. At Loup City.

Q. Addressed to whom?—A. Addressed to Mr. French.

Q. Did you ever receive any yourself?—A. I never did; no, sir.

Q. Did you ever have occasion, in your business relations with Mr. French, to act on any of those letters that you say Mr. French received in a handwriting similar to the handwriting of the petition?

Mr. HENKLE. That is very leading.

Mr. MERRICK. Of course it is.

The COURT. It is a preliminary question.

Mr. MERRICK. Authorized by law to be leading.

The COURT. You can ask the question.

Q. Did you act on any of the letters, of which you have spoken, received by Mr. French, the handwriting of which was similar to that of the petition?—A. I did, sir, for Mr. French.

Mr. HINE. We object to that as incompetent.

The COURT. I overrule your objection.

Mr. HINE. We wish an exception.

[The exception is accordingly here noted.]

Q. Did you act on behalf of the individual who wrote the letter?—A. I did, in this instance.

Q. Did you in any other instance?—A. I do not call to mind any other instance in which I did at this time.

Q. Now, do not answer this question until the court decides. What name was signed to those letters?

Mr. HINE. [Interposing.] I object.

Mr. MERRICK. I have not finished the question yet. I told the witness not to answer.

The COURT. Oh, yes; I know you did.

Q. What name was signed to the letters on which you acted for Mr. French, the handwriting of which was similar to that of the petition?

Mr. HINE. I object to the question.

The COURT. The question is excluded.

Q. What business did you do for Mr. French when he gave you those other letters?—A. I answered them.

Q. You answered the letters?—A. For Mr. French in his own name.

Q. To whom did you address your answer?

Mr. HINE. That I will object to as inadmissible and incompetent.

The COURT. I do not think that is proper. The question is improper on several grounds. The letters addressed to Mr. French are not letters addressed to the witness. The witness himself was not in correspondence, and we have Mr. French interposed between the writer of the letters and the witness. Mr. French may have represented to the witness that the letters were from a certain person, when, as a matter of fact they were not. It is hearsay.

Q. [Resuming.] Did you do any business for Mr. French in connection with those letters otherwise than what was necessary to be done?

Mr. HINE. That I object to as incompetent and immaterial.

The COURT. I shall rule that question out. You cannot get this witness in to prove that handwriting, directly or indirectly.

Q. [Resuming.] You have stated to the jury that that petition was in your handwriting with the exception of those words?—A. Yes, sir.

Q. Do you know whose handwriting those words are in?—A. I do not, sir.

Q. Have you ever seen that handwriting before?

The WITNESS. These three words?

Mr. MERRICK. Yes.

A. Not that I remember; no, sir; I have not.

Q. How are they written; ordinarily or backwards?—A. Written backwards.

The COURT. The jury has seen that paper.

Q. Did you circulate that petition?—A. Yes, sir. I see a number of signatures there that I procured myself to the paper.

Q. When was it last in your hands in Nebraska, relatively to the time of the signatures?—A. I had it the last of anybody.

Q. What did you do with it? To whom did you send it, or what disposition did you make of it?—A. I sent it by mail to John M. Peck, lock-box 714, according to the instructions given me by Mr. French.

Q. To Washington City?—A. To Washington City; yes sir.

Q. When you inclosed that petition to John M. Peck, lock-box 714, Washington City, state whether or not it contained those three words which you say are not in your handwriting?—A. It did not, sir.

Q. How did you send it; by mail or private hand?—A. I sent it by mail.

Q. Here is a letter marked "32 A" [submitting paper], introduced by the defendants yesterday, and I believe it was shown to be in your handwriting. Look at the paper and state if you recognize it?—A. [After examining same.] That is my handwriting, sir.

Q. Will you state the circumstances under which that letter was written?

Mr. HINE. I object to that. Let the letter speak for itself.

The COURT. The question is not a question as to adding to or varying the paper. It relates to the circumstances under which the paper was written.

Mr. HINE. I object to it then, because he is not the party to interpret the letter in any way, either by circumstances or—

The COURT. [Interposing.] He is not asked to interpret the letter. He is asked for the circumstances under which the letter was written.

Mr. HINE. I object to the question, upon the ground that I have stated.

The COURT. [To Mr. Merrick.] You can ask the question.

Mr. HINE. Let the exception be noted.

A. This was written for the purpose of getting a post-office—

Mr. TOTTEN. [Interposing.] That is not an answer to the question.

A. —off the route.

Mr. TOTTEN. He did not ask you the purpose of writing the letter, but he asked the circumstances under which it was written.

The COURT. The witness misunderstood the question.

The WITNESS. Yes, sir; I misunderstood the question.

Mr. TOTTEN. The letter discloses his purpose.

Mr. MERRICK. I suppose we can all agree that that was the purpose of writing the letter—to get rid of Cedarville.

Mr. WILSON. We all agree to just what the letter says.

Mr. MERRICK. I say it was to get rid of Cedarville.

The COURT. The question is as to the circumstances which caused or which accompanied the writing of that letter.

By Mr. MERRICK:

Q. [Resuming.] Just state that; the circumstances that caused and accompanied the writing of that letter?—A. Mr. French was carrying the mail on route No. 34149, from Kearney to Kent, and Cedarville was upon this route, causing him to travel, I think, some sixteen or seventeen miles off the usual line of travel, and he was anxious to get that cut off from the route, and I had written several letters for him in relation to the matter, under his signature, to Mr. Peck, and we could not receive anything satisfactory, and Mr. French finally requested me to write stating the exact places that he wanted it go to and consequently I wrote this letter.

Mr. HINE. Is that testimony, stating what Mr. French told him, and all that sort of thing?

The COURT. I think it is within the ruling of the court. He is stating the circumstances which gave rise to the writing of the letter and the object of the letter. Mr. French himself has testified to the object of the letter.

A. [Continuing.] The conclusion of the letter shows its object: "And it will be more convenient than adopted any other way." The idea was to cut off Cedarville from the route and that was the intention with which the letter was written.

CROSS-EXAMINATION.

By Mr. HINE:

Q. You have resided for seven years, I understand you to say, at Loup City?—A. Not at Loup City; no, sir. I resided four years at Loup City.

Q. I understood you to say that you have been acquainted with Mr. French for several years?—A. Yes, sir; I have. He lived at Kearney at the time I did.

Q. How long had you resided at Kearney before you removed to Loup City?—A. About six years.

Q. That is a growing region of country, and was at that time?—A. Yes, sir.

Q. And since then has increased rapidly in population?—A. Yes, sir.

Q. And it is being settled by enterprising people?—A. Sherman County; yes, sir.

Q. Loup City is in Sherman County?—A. Yes, sir.

Q. How is it between Loup City and Kearney?—A. Well, it is being pretty well settled now.

Q. How was it in 1878 and 1879?—A. There were very few settlers there.

Q. How was it in 1880?—A. It was better. Of course, they were coming in gradually all the time.

Q. In 1878 did nearly all the mail that went out of Kearney go to Loup City?—A. I could not say, I am sure.

Q. There was very little settlement in 1878 and 1879 between Kearney and Loup City; is that a fact?—A. Yes, sir; there was very little settlement then.

Q. There were no towns of even fifty inhabitants between Kearney and Loup City in 1878 and 1879; is that what you mean?—A. No, there were not.

Q. Since then it has grown with some rapidity all along the line?—A. Yes, sir.

Q. Loup City is something of a distributing point for the north-western and northeastern portion of the country?—A. I understand so.

Q. You have resided there for four years, you say?—A. Yes, sir; I have resided there for four years.

Q. And you cannot state to us as a fact whether it is a distributing point for a large portion of the country northwest and northeast from there?

The WITNESS. Do you mean as to mail matter or generally?

Mr. HINE. As a distributing point for merchandise and business generally.

A. Yes, sir, it is.

Q. You acted as attorney and adviser generally for Mr. French during all the time that he had this subcontract, did you?—A. Yes, sir; I acted as attorney for him.

Q. And you signed his name by permission from him, I presume?—A. I did, sir.

Q. Did you write any letters that he did not know all about?—A. I never did; no, sir.

Q. It was a matter of frequent conversation between you and Mr. French as to what ought to be done along the line of the route, was it?—A. Yes, sir; it was.

Q. You had no interest with him, I presume, excepting as his lawyer?—A. No, sir; I did not.

Q. He had been carrying the mail before this contract or subcontract over that same line, had he not?—A. Yes, sir; he had carried it some time before, I believe.

Q. Was he a bidder upon this route before he took this subcontract?—A. I could not say. I do not think that I had anything to do with Mr. French's matters until just immediately prior to the time of his taking the contracts with Mr. Dorsey.

Q. Were you present when this paper that you say is a contract was given to him?—A. Yes; I was.

Q. That was in the spring of 1878, was it?—A. Yes, sir.

Q. You have attempted to explain a letter here. Had it been a matter of conversation between you and the people around there, and Mr. French in reference to having a mail from Kearney to Loup City on a schedule of thirteen hours?—A. No, sir; it never was a matter of conversation between us.

Q. Never was talked of between you and Mr. French?—A. No, sir.

Q. Never was suggested by anybody around there?—A. No, sir.

Q. Now, you were writing to secure some object when you wrote to Mr. Peck, were you not?—A. Yes, sir.

Q. And you intended to state truthfully what the wants of the people there were, did you not?

The WITNESS. At the time I wrote?

Mr. HINE. In that vicinity, when you wrote to him.—A. Undoubtedly.

Q. You say in this letter——

The COURT. [Interposing.] He is not to interpret the letter; that I did not allow the other side to do.

Mr. MERRICK. I have no objection at all.

The COURT. Well, I cannot allow him to do it.

Mr. HENKLE. This is his own letter, your honor. We are cross-examining him.

The COURT. I understand it.

Mr. HENKLE. The rule goes further on cross-examination than it does on examination-in-chief.

The COURT. But the rule never goes so far on cross-examination as to allow you to change or alter a written paper.

Mr. HENKLE. We do not propose that. We ask him why he did this and why he did that.

Mr. HINE. The other question has been ruled out. I propose to read him a portion of the letter. It has been ruled out, and there is no use discussing it. Will the reporter oblige me with the repetition of my question?

[The reporter repeated the question as follows:]

Q. "You say in this letter"—

The REPORTER. That is as far as you got into your question?

Mr. HINE. You were then cut off by the court?

The COURT. You can complete your question, Mr. Hine. I did not intend to cut off your exception.

Mr. HINE. I propose to read a portion of the letter to the witness.

The COURT. What part of the letter do you propose to read?

Mr. MERRICK. Put your question. Do not say what you propose to do, but do it.

By **Mr. HINE** :

Q. [Resuming.] You know the handwriting of Mr. French, I presume?—**A.** Yes sir.

Q. Your partner's name was Hale?—**A.** Yes, sir.

Q. [Forwarding a paper to the witness.] I will send this up to you and ask you in whose handwriting it is?—**A.** [After examining the same.] Yes; that looks like Mr. Hale's writing.

Q. Your partner's?—**A.** My former partner; and I think the signature is Mr. French's.

Q. How long was Mr. Hale your partner?—**A.** About nine months.

Q. It is possible you can give us more definite information than whether it looks like his or not. Give us your statement from your knowledge of his handwriting.—**A.** Yes, sir; I should say it was his handwriting.

Q. Was it a matter of repeated conversations in the office between you and Mr. French in reference to this mail route from Kearney to Kent, and how certain post-offices should be taken out of it, and how certain other post-offices could be added to it to the advantage of the carrier?—**A.** Not exactly that. That is, to his advantage in—

Q. [Interposing.] You did not care anything about it being to his advantage?—**A.** Yes, sir; to his advantage in certain ways, of course; that is, as to travel.

Q. Was it a matter of repeated conversation between you and Mr. French?—**A.** It might have been; yes, sir.

Q. The question was, was it?—**A.** I could not be sure as to whether it was a subject of repeated conversation or not. I think that on one occasion we talked the matter over pretty fully.

Q. On any more than one occasion?—**A.** I do not believe that we did on more than one occasion. I remember at the time that letter was written that is presented here that we talked the matter over pretty fully.

Q. At the time of the letter of January 23, 1879?—**A.** Yes; that is the letter.

Q. It had been talked over pretty fully before?—**A.** I talked it over pretty fully at that time with Mr. French.

Q. This letter which was introduced in evidence is dated January 23, 1879?—A. I could tell if I saw the letter. [Letter submitted to witness.] Yes, sir; this is the time that I was speaking of.

Q. That is the only occasion of its having been talked over in your office with Mr. French?—A. That is, with myself. I could not say as to what he talked with Mr. Hale in regard to it.

Q. Mr. Hale is not here?—A. I think not.

Q. [Submitting a letter to witness.] Do you know of the sending of this letter signed by Mr. French?—A. No, sir; this is the first I know of it.

Q. This is the letter of June 19, 1878, written by your partner and signed by Mr. French. Do you know anything about that letter?—A. I am not quite sure that Mr. Hale was a partner of mine at that time.

Q. What time did you and Mr. Hale dissolve partnership?—A. I believe our partnership was formed in July of that year—1878.

Q. In July?—A. I think it was; I won't be sure about that.

Q. Did Mr. French consult you generally, or did he consult Mr Hale?—A. He consulted both of us at times.

Q. Were you acting as attorney for Mr. French in January or February, 1878?—A. No, not in January and February; no, sir.

Q. Were you in April and May, 1878?—A. I think not.

Q. Were you his attorney when you resided in Kearney?—A. No, sir.

Q. Who was his attorney then; do you recollect?—A. I do not know. It was not until May, or after that time—until June, probably—that I was attorney for Mr. French at all; that is, in June, 1878.

Mr. HINE. We will have this letter marked as identified as in the handwriting of his partner, signed C. H. French, and introduce it later in evidence. It is only with a view to identification that I wish to have it marked now.

The COURT. No; it is not to be marked until it is received in evidence.

Mr. HINE. Will some one kindly put something on there so I can prove it was identified? [Submitting paper to Mr. Wilson.]

Mr. MERRICK. On the subject of identification by the witness, I think I ought to see the letter.

The COURT. When they introduce it in evidence you can see it.

Mr. MERRICK. The letter is marked now as the counsel says, and is ready to be offered because it has been identified. Now, on the subject of identification, I have the right of cross-examination.

The COURT. Yes.

Mr. MERRICK. And in order to cross-examine on that I must see the thing to be identified.

The COURT. Yes; I think you are right about it.

Mr. MERRICK. Have I the right, sir?

The COURT. You have the right after Mr. Hine finishes his interrogatories in regard to this case.

Mr. MERRICK. He has asked that it be marked as already identified.

Mr. HINE. No, sir; I asked Mr. Wilson to have it marked. You refused to allow us to see papers that we had a right to see—that were public papers. But these are private papers. I would be very glad indeed to extend all these courtesies to counsel, but they would not extend to us the courtesy of seeing public papers.

Mr. MERRICK. Courtesies are made by rules of law, and about this there can be no more courtesy than about other matters. I have given to the counsel more than the law required of me; and that I might

know whether I was right on this occasion or not I presented the matter to your honor to see whether I was right, and you have decided that it was right as a matter of law; that I had a right to see the paper. We have not even arrested them in their inquiries of this attorney in going into an investigation as to what passed between counsel and client.

The COURT. When your turn comes you shall have an opportunity of examining with reference to that paper.

Mr. MERRICK. I am aware of that, your honor. You will pardon me for saying that I made these remarks in reply to the remarks of Mr. Hine, which ought not to go upon the record without a reply.

The COURT. Such matters do not go upon the record.

Mr. MERRICK. Yes, they do, your honor. I have allowed the other side to go beyond the rules of law in all the inquiries of this gentleman as to what passed between counsel and client.

Mr. HINE. You ought not to allow me to do that. You ought not to allow me to trespass upon the rules of law.

The COURT. Do not pursue this discussion, gentlemen, time is very valuable.

Mr. MERRICK. It is so very valuable your honor, that I cannot stop the gentleman.

By Mr. HINE:

Q. [Resuming and forwarding papers to witness.] I send up to you three reports from the department and ask you if you have seen them before; and, if so, from whom you received them?—A. [After examining them.] I never saw these, I believe; no, sir; I never saw them.

Q. [Forwarding another paper to witness.] I send you a letter with the letter head "Office of M. A. Hartley, B. & M. land agent, land, law, loan, collection and insurance agency, west side public square." Dated Loup City, Neb., April 18, 1881, and ask you in whose handwriting that is?—A. That is my handwriting.

Q. And written at whose request?—A. At the request of Mr. French, to Vaile, Miner & Co.

Mr. HINE. I will read this letter.

The COURT. You had better let the counsel for the Government see the paper.

[The paper was then submitted to the counsel for the Government and handed to the clerk to be marked for identification, and was by him marked 44 A.]

Mr. HINE. The letter is as follows. [Reading:]

LOUP CITY, NEB., April 18, 1881.

Messrs. VAILE, MINER & CO., Washington, D. C.:

GENTLEMEN: A petition was forwarded to Hon. Alvin Saunders, our senior Congressman, to have Douglas Grove struck off route No. 34149 from Kearney and Kent, by the citizens of Douglas, as this does not shorten the route, but is a station on the opposite side of the river, and during bad weather cannot be supplied with mail, I would request you to see the honorable Senator and get the said post-office of "Douglas Grove" taken off said route if possible—petition was forwarded in January, 1881, but has not been heard from.

In the matter of "failures" I forward two affidavits and will forward affidavit of M. M. Pierce on Wednesday night. [He is absent from county.]

The postmistress appears to have made some serious blunders in her reports in putting my name down as carrier for both ways at the same time. You will oblige me by pointing this out to the department.

What, if anything, can be done to secure additional service on said route from Kearney to Loup City—say daily service.

I am, yours respectfully,

C. H. FRENCH.

Q. [Resuming.] The addition of Cedarville was about how far off the line that Mr. French actually run the mail route?—A. Well, I could not say exactly; probably seven or eight miles.

Q. Cedarville is seven or eight miles from Loup City?—A. No; not from Loup City.

Q. How far is it out of the line as Mr. French run the mail?—A. It is about eight miles, as I say. Cedarville is to one side. There is a lot of bluffs between that and the road, and it is very difficult to cross from the road at Fitzalon to Cedarville on account of this bluffy land.

Q. How was it from Sweetwater?—A. [Interrupting.] It might be twelve miles for all I know; I couldn't say positively as to that.

Q. Before Mr. French took this subcontract was not the mail carried from Kearney to Sweetwater and through Cedarville?—A. I know nothing about that.

Q. But you resided at Kearney during that time?—A. Yes, sir; I did.

Q. And Cedarville is about how far from Kearney?—A. I should say it was about thirty or thirty-five miles away from Kearney.

Q. Is there a wagon-road from Kearney to Cedarville?—A. There probably is now, but in those days I do not know that there was.

Q. Was there a wagon-road from Sweetwater to Cedarville in 1878?—A. I think not. I was not aware of it if there was.

Q. What extra distance did Mr. French have to carry the mail to reach Cedarville from Kearney; I mean in reference to carrying it from Kearney to Loup City. What additional distance did he have to carry it by reason of going to Cedarville?—A. I am not competent to judge of that. I could only state relatively.

Q. You heard the testimony of Mr. French yesterday?—A. Yes, sir; I did. But I am not familiar with it only from what he stated.

Q. Do you not know the distance from Loup City to Cedarville?—A. Yes, sir; I do.

Q. What is the distance?—A. We generally call it about seventeen or eighteen miles.

Q. Did you hear Mr. French testify to fifteen miles?—A. No, sir; I heard him testify it was about sixteen.

Q. You say now it is about eighteen miles?—A. I think so.

Q. Is that the way the mail was carried, from Kearney to Loup City and then down to Cedarville?—A. I do not know. There are two roads. There is one down the valley that goes meandering around, and another on top of the divide.

Q. What is the difference between those two roads?—A. I do not know, though I suppose there is some distance.

Q. Have you had any information from Mr. French in reference to the distance of either road?

Mr. MERRICK. I object.

The COURT. You have not laid the foundation for your question.

Mr. HINE. It has been a matter of investigation as to the distance between these points. Mr. French testified yesterday in reference to the distance.

The COURT. But you are asking him now as to something French told him.

Mr. HINE. I am asking him if he has any information from anybody who is reliable in reference to the distance that Mr. French was compelled to travel, or did travel, in carrying the mail from Loup City to Cedarville.

Mr. MERRICK. I object.

The COURT. You cannot put that question.

Q. [Resuming.] Will you state the distance from Kearney to Cedarville the way that Mr. French carried the mail from 1878 until the time of this indictment?—A. I have traveled along it pretty frequently. It seems a very long distance.

Q. You have traveled it very frequently?—A. Yes, sir.

Q. Have you ever been to Cedarville?—A. Yes, sir.

Q. How many times have you been there?—A. Lots of times.

Q. What road did you travel in going to Cedarville?—A. I have traveled all roads. I have traveled from Custer through, and from Westerville through, that is, up Custer County and every way, on collections.

Q. When did you first travel on this road to Cedarville?—A. Shortly after I went to Loup City. I never was at Cedarville before I went to Loup City.

Q. From Loup City you have been very many times down to Cedarville, have you not?—A. I expect I have; yes, sir.

Q. Can you tell us approximately the difference between those two points?—A. I say that I have heard it said it is seventeen to eighteen miles.

Q. How long did it take you to go from Loup City to Cedarville?—

A. That would be owing to the team I had. If I had a good team I could go there in a short time. If I had a poor team it would take longer.

Q. Tell us what time it would take with an ordinary team to go from Loup City to Cedarville.—A. That would depend upon what you call an ordinary team.

Q. Exactly. In western parlance an ordinary team would consume what length of time in going from Loup City to Cedarville?—A. If you will explain to me what an ordinary team is I will tell you.

Q. It is one of that character of teams that we use in ordinary business, such as carrying the mail. How long would such a team take to go from Loup City to Cedarville?—A. Some of Mr. French's teams will go from eight to nine miles an hour, but not on that road, though, because it is very rough.

Q. Others of Mr. French's teams will go about how many miles an hour?—A. I do not know a team that he has that would not make eight miles an hour.

Q. Easily?—A. I won't say easily.

Q. And keep it up for how many hours a day?—A. That is a question for you to decide. I do not know.

Q. You are speaking of the quality of Mr. French's teams?—A. Yes; he has good teams.

Mr. MERRICK. I object. I don't think this is a proper course of examination, as this gentleman is a lawyer and not an expert in horse-desh.

The COURT. I believe the last time I knew of the question he was asked the distance between Loup City and Cedarville.

Mr. HINE. I will go back to that as soon as I ascertain the data from which this man makes up his distances.

The COURT. Mr. French testified yesterday it was sixteen miles. This gentleman has been over the route frequently, and in his opinion it is seventeen or eighteen miles.

Mr. HINE. We have been consuming some eight or ten minutes to get his answer to the question I asked, which is, how long it would take an ordinary team, such as is used usually to go over that route, from Loup City to Cedarville.

The COURT. But he has properly answered to that, that if you would explain what an ordinary team was, he would answer.

Mr. HINE. I have explained that; I mean such a team as is usually used by mail-carriers.

The COURT. That does not explain anything.

Mr. MERRICK. He cannot answer what would be possible; he can tell what facts he knows.

By Mr. HINE:

Q. [Resuming.] Take such teams as you usually have in that country for traveling purposes, how long would it take to go from Loup City to Cedarville.

Mr. MERRICK. I object to this. There must be an end to this.

The COURT. I will stop it now. I think it has gone far enough.

By Mr. HINE:

Q. [Resuming.] You are unable to tell us any nearer the distance from Loup City to Cedarville, and the time that it would take with an ordinary team to travel from Loup City to Cedarville?

Mr. MERRICK. I object.

The COURT. I overrule the question. I cannot allow the authority of the court to be defied.

Mr. HINE. I am not defying the authority of the court. I simply take my exception.

The COURT. You take your exception and then repeat the question. I shall not permit that course.

By Mr. HINE:

Q. [Resuming.] You have reported that distance, have you not, in letters to the parties here in Washington?

Mr. MERRICK. I object until the letters to the parties are shown.

The COURT. [To Mr. Hine.] You can put that question.

A. I may have done so, but I do not know that I ever did.

Q. [Forwarding a paper to witness.] I will send this letter up to you and ask you in whose handwriting it is?—A. [After examining the same.] That is my writing, sir.

[The letter was submitted to counsel for the Government.]

Mr. MERRICK. [After inspecting the same.] That is all right.

Mr. HINE. I will read the letter.

LOUP CITY, NEB., January 23d, 1879.

JOHN M. PECK, Esq., Washington, D. C.:

DEAR SIR: I would most earnestly request of you to use every effort to cause the furnishing of Cedarville, on said route, to be discontinued, as the road there is rough and precipitous, and also that it has to be supplied by a side mail, causing travel of sixty miles at least. If you cannot do this, be sure that you prevent any increase to that office, as I cannot supply it.

I am yours, respectfully,

C. H. FRENCH.

[The letter just read was marked by the clerk 45 A.]

Q. [Resuming, and forwarding a letter to the clerk.] I send you another letter, and ask you in whose handwriting that is, and by whom it is signed?—A. [After examining the same.] That is my writing.

Mr. MERRICK. Who signed it?

The WITNESS. It is signed for Mr. French by me.

Q. [Continuing.] That is Mr. French's own signature, is it not?—A. No, sir; it is signed by me.

[The paper just identified by the witness was submitted to Mr. Merrick for inspection.]

Mr. MERRICK. [After examining the paper.] That is all right.

The WITNESS. I would like to look at that again.

[The paper was again submitted to the witness.]

Mr. MERRICK. It is addressed to Mr. Miner. Let the clerk mark it.

[The paper was marked by the clerk 46 A.]

Mr. HINE. I will read the paper.

LOUP CITY, NEBR., December 29, 1879.

JOHN MINER, Esq., Washington, D. C.:

DEAR SIR: Inclosed you will find the necessary affidavit in regard to the crossing the river.

There are rumors afloat here that one Alexander Baillie is trying to procure the said service of mail route No. 34149. The said Baillie is now running a mail route for William Baillie, the postmaster at Loup City—at least every one thinks it is for William Baillie, as William's teams run on the route. He hires all the carriers, &c., &c.

Mr. MERRICK. [Interposing.] Read it all, Mr. Hine.

Mr. HINE. I am reading it all. Those words occur in the letter.

The name of that route is 34191. Please inform me if unfavorable reports are sent in about me, so I can show the facts.

I am yours, very truly,

C. H. FRENCH.

P. S.—If you can obtain the names of the parties complaining, please let me know.
Address all letters

C. H. FRENCH,
Kearney, Buffalo Co., Nebr.

I will follow that up in due time with other matter.

The COURT. What in the world is all this about?

Mr. HINE. I have just suggested that I would follow it up.

Mr. MERRICK. Follow it up with what?

Mr. HINE. With testimony to show that it is of importance.

Mr. MERRICK. I object to the letter.

The COURT. I will exclude the letter. There are some limits to the cross-examination.

Mr. MERRICK. Let the clerk erase the mark.

The COURT. It goes upon the record because he takes his exception.

Mr. HINE. I think I have got along as far as I care to go.

Mr. MERRICK. Now, let me have that letter that you identified.

Mr. HINE. I will ask one or two other questions.

Q. [Resuming.] Were you in correspondence in reference to this route with Mr. Saunders, who was Senator in Congress?—A. I corresponded with him in regard to the route; yes, sir.

Q. From what date?—A. That I could not say. I have written to him several times in regard to it.

Q. Was it not your habit and custom to send petitions and other papers in reference to that route to Mr. Saunders?—A. Yes, and others.

Q. To other parties?—A. About that route and other routes. We were anxious to get mails through there.

Mr. HINE. That will do.

Mr. MERRICK. I want the letter that Mr. Wilson identified.

REDIRECT EXAMINATION.

By Mr. MERRICK:

Q. [Submitting a paper to the witness.] Is that the letter that you
No. 14336—35

said was in the handwriting of your partner?—A. [Referring to the letter.] He was not my partner at that time.

Q. That is the one that you spoke of being in the handwriting of Mr. Hale?—A. Yes, sir.

Mr. MERRICK. That is all I have to ask him.

RECROSS-EXAMINATION.

By Mr. WILSON:

Q. Are you the attorney of Mr. French with reference to any claim that he has against the contractors growing out of the expedition of the service?—A. No, sir; I am not his attorney now; not in that matter.

Q. Have you at any time been his attorney in regard to that matter?—A. Well, I wrote a letter to somebody; I believe it was to Vaile, Miner & Co., in regard to the matter for him. I had not been attending to his business, though, for probably nine months before. At the time I was in partnership with a man by the name of Savage. Mr. Savage was a lawyer and attended to all his business.

Q. I do not care about all the details. Were you aware of the fact that a law had been passed which authorized the subcontractor to file his contract in the Post-Office Department, and receive his pay directly from the department?—A. No, sir; I was not.

Q. Then you do not know how it happened that Mr. French failed to put his contract on file and protect himself in whatever rights he might have had?—A. I know that on the back of the subcontract there were instructions particularly charging Mr. French not to confer with the department.

Q. I am not talking about that?—A. Well, but this was in relation to this very matter. That was the very reason why Mr. French did not file it in the department.

Q. He did not file it in the department, so far as you understand?—A. Yes, sir; it is my understanding that he never did. He never knew anything about the law.

Q. You yourself were not aware of the fact that there was a law that had been specially passed for the purpose of taking care of matters of that sort?—A. No, sir; I was not.

Q. And you did not know how that law came to be passed, either, did you?—A. No, I did not know anything about it.

Q. You did not know anything at all about it?—A. No, sir.

By Mr. MERRICK:

Q. You say that he was instructed not to apply to the department?—A. On the back of the contract.

Mr. WILSON. Whatever is on that paper shows for itself, and it is in evidence.

The COURT. If it is there.

By Mr. MERRICK:

Q. You were present when this contract was executed?—A. Yes, sir.

Q. And when this copy was made?—A. No, sir; I was not there when the copy was made. I was there when the original contract was executed, and signed it as surety for Mr. French.

Mr. MERRICK. In print, on the back, the following appears:

Subcontractors only complicate and create delays by endeavoring to correspond with the Post-Office Department—

Mr. WILSON. [Interposing.] Hold on a minute. If your honor please, I object to that. The paper is in evidence, and it speaks for itself.

Mr. MERRICK. The paper I am reading?

The COURT. The face of the paper has been proved. I do not know that this indorsement has been proved.

Mr. WILSON. The whole paper has been introduced in evidence.

The COURT. I have not been aware until this moment that there was such an indorsement.

Mr. MERRICK. Nor I.

Mr. WILSON. Will you allow me one word with the witness?

Mr. MERRICK. I thought you were done.

Mr. WILSON. No. Here is a paper marked "5 A." It is already in evidence. I simply want to show it to the witness.

Q. [Submitting paper to the witness.] That is also in your handwriting, is it?—A. Yes, sir; that is in my handwriting.

By Mr. MERRICK:

Q. This paper contains this indorsement:

Subcontractors only complicate and create delays by endeavoring to correspond with the Post-Office Department about any service which is being performed under such contract.

That is what you referred to, I suppose?—A. Yes, sir; that is what I referred to.

The COURT. Are you done with this witness on both sides?

Mr. WILSON. I am done.

Mr. MERRICK. Yes, sir; I am.

GEORGE J. BREWER, recalled.

By Mr. MERRICK:

Question. You have been sworn before, I believe?—Answer. Yes, sir.

Q. And testified as to your position in the department?—A. Yes, sir.

Q. [Submitting a paper to the witness.] Look at that paper and state what it is, and where it came from?—A. It is part of the official records of the department. This particular paper is on a route in Indian Territory, the route of the lowest number which was awarded to J. M. Peck under the November, '77, advertisement. A letter is inclosed requesting that his address be changed on route intended for him to care of lock-box 714, Washington, D. C.

Mr. WILSON. What is that you are doing? Are you reading from the paper?

Mr. MERRICK. Yes, sir. He is making a mistake.

Mr. WILSON. Of course he is, and therefore I call his attention to it.

By Mr. MERRICK:

Q. [Resuming.] It contains a paper, and those two papers are from the records of the department and were under your custody?—A. Yes, sir.

[The papers were here submitted to Mr. Wilson.]

By Mr. WILSON:

Q. At what time were contracts entered into or prepared relative to the letting of the fall of 1877?

Mr. MERRICK. One moment. I will object to that question upon the ground that it is not legitimate on cross-examination, he being summoned only to show a paper in his custody.

Mr. WILSON. It will save a great deal of time, if your honor please, if I may be permitted now to prove with reference to this particular paper that at the letting the contracts are prepared and then are sent out to the address of the contractors for their signatures, &c.

Mr. MERRICK. What the paper is we do not know. I have not read it yet.

Mr. WILSON. I was simply trying to save a little time.

Mr. MERRICK. Let me save it by reading the paper. May be my objection may be removed. I have not read the paper myself.

Mr. WILSON. [Returning the paper to Mr. Merrick.] I have not the slightest objection to the paper.

Mr. MERRICK. I will read it. [Reading:]

WASHINGTON, D. C., March 4, 1878.

Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General:

SIR: I have to request that all contracts intended for me be forwarded to the postmaster at Washington, D. C., and all acceptances and communications be addressed to me, care lock-box 714, Washington, D. C., until otherwise ordered, and oblige,

J. M. PECK.

[The paper was submitted to the clerk and marked by him 47 A.]

The COURT. That is merely in connection with the lock-box.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. In the conduct of the business of the office there, did you have the address of the bidders for contracts?—A. Yes, sir. Of the accepted bidder, as a matter of record only.

Q. In the proposal, do you have the address of the party making the proposal for a contract?—A. If the proposal is properly made the address is always in it, sir.

Q. Is there anything unusual in a contractor, or a party with whom a contract is to be executed, having his post-office address changed?—A. Certainly not, sir.

Q. And it is the practice of the office, is it not, when the contracts are awarded, to notify the party that the contract has been awarded to him?—A. Yes, sir.

Q. And when the contract is prepared to send the contract to him to his address?—A. To send it to the postmaster at his address with directions to give it to him.

Q. And, therefore, there is nothing in this matter that is at all unusual in the management of the business of the Post-Office Department?—A. Certainly not.

Q. Those addresses are kept and these things are sent out for the convenience of the department and the contractors?—A. Yes, sir.

Q. Is there anything unusual in persons having lock-boxes at the post-office?—A. [Laughingly.] I do not know.

Q. That is a very common thing, is it not?—A. I should think very likely it was. I do not know anything about that particular case.

Q. Are there not very many cases where you address persons to their lock-box?—A. Not very many, but there are several.

SEYMOUR W. TULLOCK, sworn and examined.

By Mr. KER:

Question. You are a clerk in the Post-Office Department?—Answer. I am cashier of the city post-office.

Q. Have you charge of the book that contains the names of the people who rent boxes?—A. Yes, sir.

Q. Will you turn to the entry of box 714, and tell us who rented that box in March, 1878, and give us all the subsequent entries in relation to it?—A. [Referring to a book.] Box 714, or rather as it is known in the post-office, drawer 714, on March 31st, 1878, has against it the name of J. H. Kepner. That is on the quarter ending March 31st, 1878, and from the records it appears to have been entered on the 1st of January, 1878. The quarter is paid in full from the first day of January, 1878, until March 31st, 1878.

Q. Who continues to hold the box?—A. The box at present is still in the name of J. H. Kepner.

Q. Will you turn to box 706, January, 1879, and thereafter?—A. [Referring to book.] Yes, sir; I have it.

Q. Well, sir, who held that box?—A. On January 1st, 1879, the box stood in the name of H. H. Brower. Mr. Brower's name was then erased, and the name of M. C. Rerdell is down as having rented the box.

Mr. MERRICK. What time was that?

The WITNESS. That could have been taken at any time after the 1st day of January, 1879, when I transcribed from that book into this.

By Mr. KER:

Q. [Resuming.] What positive date can you give of that box being held by Mr. Rerdell?—A. I have a positive date that it was held by him on June 30, 1880. He could have had it at any time from January 1 to June, 1880.

Q. You have positive knowledge that he had it?—A. I have simply the knowledge that the box was paid for in full during those times.

Q. Is it still in his name?—A. Box 706 is in the name of M. C. Rerdell at present.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. How many lock-boxes are there in that post-office?—A. The boxes run up to 724, but there is a skip of about a hundred. I should say that there are about six hundred rented

Q. Lock-boxes?—A. Lock-boxes and drawers.

Mr. MERRICK. Six hundred rented?

The WITNESS. Almost all rented, without exception.

Mr. MERRICK. Some are not?

The WITNESS. With the exception of the upper part, where they are inconvenient of access.

WILLIAM B. TURPIN, sworn and examined.

By Mr. KER:

Question. Are you a clerk in the city post-office here?—Answer. I am, sir.

Q. Have you charge of the lock-boxes?—A. I have sir.

Q. Do you know box 714?—A. I do, sir.

Q. Is it part of your duty to put the mail in that box and other boxes?—A. Yes, sir.

Q. Whose mail from August, 1880, or thereabouts, up to the present time, have you placed in lock-box 714?—A. The mail of Mr. J. R. Miner and his family at times, and the mail for Miner, Peck, and Dorsey.

Q. Do you know who has taken the mail out of that box?—A. I do

not know ; I know that J. R. Miner has taken it out, and J. R. Miner's son I have seen take it out ; that is, take out private mail ; I don't think he took anything else ; further than that I could not say.

Q. They could go and take it out without your seeing them ?—A. Without being seen.

Q. Any one having a key can open the box ?—A. Any one having a key can open the box.

Q. You have seen personally Mr. Miner ?—A. Yes, sir.

Q. You also have charge of box 706 ?—A. I have, sir.

Q. Whose mail did you place in box 706 after January 1, 1879 ?—A. I have, since that date, placed in it mail for M. C. Rerdell and S. W. Dorsey.

Q. Have you seen Mr. Rerdell at the office at the box ?—A. Yes, sir.

Q. Who has taken away the mail that you know ?—A. No one, with the exception of him, that I know of.

Q. Whom have you seen take mail out of it ?—A. Mr. Rerdell only.

Q. Do you know J. H. Kepner ?—A. I do not.

Q. Have you ever heard of him before ?—A. I have heard the name mentioned since this case was started and before ; I seem to have a slight recollection in my mind of hearing the name, but I can form no definite conclusion where I heard it.

Q. Have you ever seen a man or a boy named Kepner taking the mail ?—A. I don't know any such person.

Q. The only person, then, that you recollect is Miner ?—A. Yes, sir ; and his son.

Q. And out of box 706, Rerdell ?—A. Yes, sir.

Q. Have you seen Mr. S. W. Dorsey take mail out ?—A. I do not know the gentleman.

Q. He might have taken it out without your knowing it ?—A. Any one might have done it.

Mr. WILSON. [Objecting.] Hold on, please.

Mr. KER. You may cross-examine.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. Will you now please tell the jury again about what time the mail of M. C. Rerdell and Dorsey began to be put into box 706 ?—A. That is what I cannot do, sir.

Q. Was it not prior to the 1st of January, 1879 ?—A. I was not on the box division at that time, and do not know, sir.

Q. Then, you are not able to fix the time when the Miner mail, so to speak, and the Rerdell mail, so to speak, came to be separated and put into entirely different boxes ?—A. I am not able to settle that.

Q. How long have you been in there ?—A. I have been in the office about eight years may be, more or less.

Q. How long have you been in charge of the lock-boxes ?—A. Since the last of August or the 1st of September, 1881. Prior to that time, from August, 1880, I was a box clerk, working with the others in common on the boxes.

Q. Since you have been there the mails of these parties have not gone into the same box, have they ?—A. No, sir.

Q. They have had no connection or relation with each other whatever ?—A. Not to the best of my knowledge and belief. I have no reason to believe them to be connected.

Q. Do you know personally all the persons who have lock-boxes there ?—A. No, I do not.

Q. You say you do not know Mr. Kepner?—A. I do not know Mr. Kepner.

Q. And there are a great many others you do not know?—A. Well, not a great many. There are quite a number that I do not know personally by sight.

Mr. COLE. If your honor please, I desire to ask the witness a single question.

Mr. MERRICK. Has your honor settled the question as to how many counsel shall cross-examine?

The COURT. I thought I had settled that question.

Mr. MERRICK. I thought so, too.

Mr. COLE. I will suggest the question to Mr. Wilson.

By Mr. HINE :

Q. Have you noticed anybody going into the box——

Mr. MERRICK. [Interposing.] I object. I think one counsel is enough.

By Mr. WILSON :

Q. How many keys are there to these boxes?—A. I do not know, sir.

Q. Do you keep a record of the keys that go out with the boxes?—

A. Mr. Tullock does, I believe; I do not.

Q. There is a record kept?—A. I understand so by him; yes, sir.

Q. You do not know how many keys are out?—A. I do not know how many keys are out. Any locksmith can make a key. I have made dozens of them myself.

Q. You give out keys do you not?—A. I do; yes, sir; when parties apply for them.

Q. Did you give out more than one key for this box 706?—A. I have no recollection at all of the matter.

Q. When you do give out a key you make a record of it?—A. I turn in to Mr. Tullock 50 cents cash and he records it in his book.

Mr. WILSON. [Turning to Mr. Tullock.] Have you got your record here as to the keys?

Mr. TULLOCK. Yes, sir.

Mr. WILSON. Can you tell the court and jury how many keys——

Mr. MERRICK. [Interposing.] Let us get through with this witness first.

Mr. WILSON. Let us have it right in this connection.

Mr. MERRICK. Oh, no; get through with one at a time.

By Mr. HINE :

Q. Have you noticed——

Mr. MERRICK. [Interposing.] I object to more than one counsel cross-examining.

The COURT. I think we will have to enforce this rule.

Q. Have you noticed——

The COURT. [Interposing.] You cannot put the question. I said I thought I would have to enforce the rule.

Mr. HINE. I claim to represent Mr. Vaile, and I want to ask a question in the interest of Mr. Vaile. Mr. Wilson has cross-examined this witness for his clients.

The COURT. I cannot allow the same line of inquiry.

Mr. HINE. I do not propose to ask the same question that Mr. Wilson has asked.

The COURT. I know; but I cannot allow the same line of inquiry. If you have anything new on some other subject——

Mr. HINE. [Interposing.] I think it is a very important matter, your honor.

The COURT. What is your question ?

Mr. HINE. My question is whether the witness has ever seen a letter go into box 714 bearing the name of Dorsey, except letters from the department.

The COURT. That is in the same line. I must enforce the rule, because there are ten of you, and the same line of cross-examination might otherwise be taken up by each from one end to the other.

Mr. HINE. Because the Government charges that my client entered into a conspiracy, that does not authorize the other parties——

The COURT. [Interposing.] That question has gone beyond argument now. You can take an exception.

Mr. HINE. I desire to cross-examine the witness on behalf of Mr. Vaile. This is refused by the court, and I take an exception.

The COURT. The question may be put through Mr. Wilson, who first took up the cross-examination.

Mr. HINE. Will Mr. Wilson please ask the question of the witness ?

The COURT. Mr. Wilson can put the question for you. For economy of time I am obliged to enforce this rule.

Mr. HINE. It seems to me it takes more time to suggest the question to another than it would to put it yourself.

Mr. WILSON. Will the stenographer please repeat the question proposed by Mr. Hine. I will adopt it as mine.

The question was repeated by the stenographer as follows:

Q. Have you ever seen a letter go into box 714 bearing the name of Dorsey, except letters from the department ?

The WITNESS. Which Dorsey ?

Mr. WILSON. Either of them.

A. I do not remember myself putting any letters addressed personally to these gentlemen in the box, though that might have been done.

By Mr. WILSON :

Q. Have you put any letter in that box addressed to Miner, Vaile, and Dorsey, except such as came from the departments ?—A. We cannot recollect positively the places where letters are from. We take no notice of that at all.

Q. Do you recollect putting in any letters that did not bear the stamp of the department upon them ?—A. I cannot answer that ; I don't recollect putting any in there at all.

Mr. MERRICK. Any at all ?

The WITNESS. Any bearing the stamp. I don't recollect what stamp they bore.

Q. You say that the letters of the firm of Miner, Vaile & Dorsey were put in that box ; do I understand you aright ?—A. I did not say so ; I said Miner, Peck & Dorsey.

Q. Tell the jury what letters were put into box 714—how they were addressed ?—A. Letters have been put in there addressed to J. B. Miner, to different members of his family, and to Miner, Peck & Dorsey.

Q. The letters that were addressed to Miner, Peck & Dorsey are the ones to which I wish to call your attention. Were those letters that came from the department or letters that came from various parts of the country ?—A. That is what I cannot answer, sir. I could not tell anything positively about it, because I do not know.

The COURT. [To Mr. Wilson.] Oh, well, he has answered that he did

not know. Mr. Vaile is not concerned in either of these boxes, as I understand it.

Mr. HINE. If the reporter will look back I think he will find that the witness mentioned Vaile. It was a slip of the witness, I knew, or suppose it was. That is what I was trying to get at.

REDIRECT EXAMINATION.

By Mr. KER :

Q. Who was your predecessor in charge of the boxes?—A. No one had had the immediate charge of the boxes, but Mr. Willoughby Crossfield has been working on the boxes for a number of years, especially on this section in which box 714 is situated.

Q. What time does he go on duty?—A. He will be on duty about half past 2 o'clock.

Mr. KER. Send him up here, please.

THOMAS L. TULLOCK, recalled.

By Mr. WILSON :

Question. I want to know how many keys were out for boxes 706 and 714, and who had them?—Answer. [Referring to book.] For 706 we have redeemed one key, and for 714 we have redeemed two keys.

Q. Do you know who had the keys of 714?—A. No, sir. When parties rent boxes we furnish them keys at 50 cents apiece, and make a record, and then when they bring those keys back we redeem them. If they have keys made elsewhere and bring us three keys, and we have only two against the box, we only redeem the two.

By Mr. MERRICK :

Q. Let me understand that. Your record seems to be a record of redeemed keys.—A. No, sir; the amount which we will give back to them.

Mr. COLE. If your honor will pardon me, I make the objection that two counsel are examining on the other side.

Mr. MERRICK. Two counsel are not examining on this side. He has come back.

Mr. COLE. He was examined by Mr. Ker.

Mr. TOTTEN. Now, brother Merrick, we want you to drink the same cup you give us.

Mr. MERRICK. I will take it if it is the same cup. I intend that you shall drink it.

The COURT. I will sustain the objection.

Mr. MERRICK. Very well; that is all right.

By Mr. KER :

Q. Is that a record of redeemed keys, or keys that have gone out?—

A. It is simply a record of the keys which have been furnished by us.

Q. You mean it is a record of the keys for which you hold the persons responsible who have the box?—A. Or, by putting it the other way, they hold us responsible for that amount of money.

Q. And if for box 714 you gave out one key only you would only expect one key returned?—A. Fifty cents for that one key. It is to prevent our furnishing keys and the parties losing them and our having to keep on furnishing them.

By the FOREMAN: [Mr. Dickson.]

Q. You testified that you rented box 714 in 1878 to J. H. Kepner. How many keys did you issue to J. H. Kepner at the time of rental?

Mr. MERRICK. To whom were the keys issued ?

A. There were two keys charged against that box at that time.

Mr. MERRICK. You don't know to whom you gave the keys ?

The WITNESS. No, sir.

Q. You rented box 706 some time prior to June 30, 1880 to M. C. Rerdell. How many keys did you issue to him ?—A. Only one key was charged against that box.

Q. You say you redeemed two on that box ?—A. We would redeem two on box 714 and one on box 706. It is simply to protect the office from furnishing lots of keys and their being lost. When the parties return the key we return them their money. That is all.

Mr. MERRICK. They borrow the key and deposit 50 cents for it ?

The WITNESS. Simply deposit this money. The record of the keys here kept is simply the record of the amount of money they have on deposit with us.

JACOB S. TAYLOR, sworn and examined.

By Mr. MERRICK :

Question. Where do you live ?—Answer. I reside in Colfax County ; either Santa Fé or Springer is my address.

Q. What State ?—A. New Mexico.

Q. What is your business ?—A. My business is cattle raising.

Q. What official position did you hold in 1879 ?—A. I was notary public for Colfax County.

Q. How long were you in that office ?—A. Some four years.

Q. I want you to identify some affidavits that I will hand you. [Handing paper to the witness.] Is that your notarial seal ?—A. Yes, sir.

Mr. WILSON. Let us see.

[The paper was submitted to counsel for defense.]

Mr. MERRICK. It is just the oath of the contractor, that is all. This witness took seven affidavits on routes embraced in this indictment, and in order that he may leave, I will prove the signatures of all of them.

Q. [Handing the witness affidavit on route 34149, from Kearney to Kent.] Did Mr. Peck appear before you and sign that affidavit ?—A. He did, sir.

Q. That is his handwriting ?—A. Yes, sir.

The COURT. Show that to the other side.

Mr. MERRICK. I have shown it to them.

The COURT. They all have his notarial seal.

Mr. MERRICK. They all have it.

Q. I hand you Mr. Peck's affidavit on route 44140 from Eugene City to Mitchell. [Submitting the same to witness.] Is that your notarial seal ?—A. Yes, sir.

Q. Did Mr. Peck appear before you and execute that ?—A. Yes, sir.

Q. That is his handwriting ?—A. Yes, sir.

Q. I hand you the affidavit on route 40105 from Ehrenberg to Mineral Park. Did Peck appear before you and execute that ?—A. Yes, sir.

Q. He signed it ?—A. Yes, sir.

Q. I now hand you the affidavit on route 44155 from the Dalles to Baker City. Did Mr. Peck appear before you and sign that paper, and is that your notarial seal ?—A. It is.

Q. Route No. 44160, from Canyon City to Camp McDermott. Did Mr. Peck appear before you and execute that affidavit ?—A. He did.

Q. And it has your notarial seal ?—A. Yes, sir.

Q. Route No. 46132, from Julian to Colton. Did Mr. Peck appear before you and sign that affidavit ?—A. Yes, sir.

Q. And that is your notarial seal?—A. Yes, sir.

Q. Route No. 46247, from Redding to Alturas. Did Mr. Peck appear before you and execute that affidavit, and is that your notarial seal?—

A. He did, and that is my seal.

Mr. HINE. Before they are offered in evidence we would like to see them.

The COURT. Have you any cross-examination of this witness in regard to these papers?

Mr. HINE. I do not want to cross-examine the witness, but before they are put in evidence I want to look at them.

Mr. WILSON. Does the witness contemplate leaving the city?

Mr. MERRICK. Yes; he wants to get away.

Mr. WILSON. I understand the counsel representing Mr. Dorsey want to examine him with reference to some other matters touching the defense. Of course, we do not want to bring him back here. The gentlemen can, however, speak for themselves.

Mr. McSWEENEY. We will excuse him until afternoon, and we will have a little consultation and see how it is.

The COURT. You will be here this afternoon, Mr. Taylor?

The WITNESS. Yes, sir.

Mr. MERRICK. I examined him at his request, as he was very anxious to get home. We do not intend to keep him here at Government expense.

Mr. McSWEENEY. We do not want to detain him unnecessarily.

The COURT. [To the witness.] The court takes a recess at half-past 12 until 1. Be here then.

The WITNESS. Yes, sir.

By Mr. MERRICK:

Q. [Submitting to witness affidavit relating to route 34149.] Do you know in whose handwriting that paper is?—A. No, sir.

Q. Did you look at it at the time it was sworn to before you?—A. About as much as I have looked at it now.

Q. Do you know whether that red ink was on there when it was sworn to before you?—A. I could not say, sir.

Q. When these affidavits were taken before you, you did not look at them at all?—A. No, sir; I did not look at them particularly; I just acknowledged them.

Q. You are not able to testify in reference to their then and present condition?—A. No, sir; I am not.

Q. You could not testify with regard to that?—A. I could not.

Q. You could not say whether there were any blanks, or whether there were not?—A. No, sir; they just brought them to me, and I signed them and acknowledged them, and did not notice them.

Q. You cannot say whether they contained blanks or not?—A. No; I cannot.

Mr. MERRICK. That is all.

The COURT. You can go, Mr. Taylor.

[The witness left the stand.]

Mr. MERRICK. There is a further piece of record evidence in connection with this route that I would like to offer before I go to another route. I am done, except that.

Mr. TOTTEN. How many affidavits have you got there?

Mr. MERRICK. I have not counted them. Mr. Ker says there are seven.

Mr. TOTTEN. There are eleven mentioned in the indictment.

Mr. MERRICK. I did not prove them all. They were not all taken before Mr. Taylor. I proved what Taylor took.

The COURT. The clerk will mark the seven that were received.

The clerk marked the affidavits herein-named, as follows: 34149, 2 A, (previously marked) 44140, 48 A; 40105, 49 A; 44155, 50 A; 44160, 51 A; 46132, 52 A; 46247, 53 A.

Mr. TOTTEN. Will you use any affidavits not mentioned in the indictment?

Mr. MERRICK. I do not know that I will use any not mentioned in the indictment; I may, though.

JOHN B. SLEMAN, recalled.

By Mr. MERRICK:

Question. You have been sworn previously, and have testified as to your position and relations to the Government?—Answer. Yes, sir.

Q. Have you some of the warrants upon route No. 34149?—A. Yes, sir.

Q. From Kearney to Kent?—A. Yes, sir.

Q. From the department?—A. From the department.

Mr. MERRICK. Let me have them.

[The witness produced a package of papers, and handed the same to Mr. Merrick.]

Q. Are these all the warrants?—A. Those are all we have on file.

Mr. MERRICK. Here are all the warrants that they have on file issued upon this route and proved by Mr. Sleman. I propose to offer them in evidence.

Q. These are in the custody of your office?—A. Yes, sir.

Q. You bring them here from the department?—A. Yes, sir.

Mr. MERRICK. This is merely to complete the formal proof.

[The warrants were submitted to counsel for the defense.]

Mr. MERRICK. I will say to the court and to counsel that the amounts of these warrants appear by the pay-table offered in evidence yesterday under the certificate of the auditor.

The COURT. I understood that all these warrants were made payable to Peck's order. He was the contractor.

Mr. WILSON. They are not, your honor. I will say to your honor that we have not the slightest objection to their being put in evidence. That is to say, of course, we do not waive our general objection that they do not tend to prove any conspiracy.

The COURT. Of course not. Of course the Government paid for the service done on the route.

Mr. MERRICK. Certainly.

Mr. WILSON. They do not seem to have all the warrants here.

Q. Where are those that are not here?—A. They are not returned from the Treasury.

Mr. WILSON. I state also that we do not waive any objection, because these warrants were issued prior to the time of the passage of the act of 1878.

The COURT. I understand that that point will be raised in another way, and that you are waiving nothing.

Mr. WILSON. We are simply taking no exception to the introduction of the papers.

The COURT. I stated the other day that particularly in regard to a case of conspiracy like this, where it is difficult to see from the beginning the bearing of one particular piece of evidence or another,

that it was a very unsatisfactory way to try a case on exceptions to evidence. It is a way by which the trial may be protracted to an unreasonable length and great labor and trouble caused; and that I thought we would save time and save a great deal of trouble if counsel thought proper to make their points upon the effect of the evidence after it was in; they could reserve their exceptions to the introduction of the evidence with a view to raising the main question upon the effect of the evidence after it is in. If every particle of evidence, the effect of which probably cannot be foreseen is made a point to which exception is taken and discussion and argument arises, it is difficult to see where the end of this case may be.

Mr. CARPENTER. We have accepted your honor's suggestion and will proceed accordingly.

The COURT. I see some of you have.

Mr. TOTTEN. Your honor does not mean that we shall allow testimony which we consider incompetent for any purpose to go in; for instance, a copy of a paper when we can have the original.

The COURT. Certainly my suggestion does not apply to such a question.

At this point (12 o'clock and 30 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. MERRICK. I see Mr. Taylor here, in obedience to the order of the court. He wants to go home to-night, if he is to go at all.

The COURT. The gentlemen on the other side were going to consult about it.

Mr. MERRICK. I thought he was to be here after recess.

The COURT. Yes; for the purpose of having them decide whether they want him or not. Have you any use for him?

Mr. MERRICK. I have no use for him.

The COURT. Mr. Taylor, you can go over and learn from the other gentlemen whether they want you or not.

Mr. MERRICK. The Government proposes to discharge him. We cannot keep him here at our expense. If they want him they can keep him.

Mr. MCSWEENY. He need not be detained this afternoon.

The COURT. He wants to leave the city.

Mr. MCSWEENY. I would rather he would see Senator Dorsey. Let him see him. We will not interrupt the proceedings.

Mr. MERRICK. The Government discharges him.

The COURT. You engaged this morning, when he was on the stand, that you would give him notice at 1 o'clock whether you would want him or not.

Mr. MCSWEENY. I did not get to see the others.

Mr. CARPENTER. We did not have any consultation.

Mr. WILSON. I presume this can be done; this is a matter about which I personally know nothing, because it does not affect my part of the case, as I understand it; but as this witness is about to leave the city, and as the defense want his testimony, I think that we might take his deposition. We have a right to have the deposition of a witness in a criminal case.

The COURT. You have a right under the statute, to take the deposition of a going witness.

Mr. MERRICK. If the witness is here——

Mr. MCSWEENEY. [Interposing.] Do you want to go this afternoon?

Mr. TAYLOR. I should like to go this evening.

Mr. MCSWEENEY. At what time?

The WITNESS. At 9 o'clock, I believe.

Mr. CARPENTER. We could not introduce the testimony now in any event.

The COURT. No; he has not been summoned by you.

Mr. CARPENTER. We could not introduce it now in any event.

Mr. MCSWEENEY. We will not delay the court. We will see Mr. Taylor after court.

The COURT. Unless you hear something to the contrary, you are discharged so far as the Government is concerned, I understand.

Mr. MERRICK. The Government discharges him.

The examination of JOHN B. SLEMAN was then resumed, as follows:

By Mr. MERRICK:

Question. [Submitting papers to witness.] Please explain what those papers are so that they may be identified in the report.

The COURT. What papers?

Mr. MERRICK. The papers I offered in evidence.

The COURT. The warrants?

Mr. MERRICK. Yes, sir; my object is to have him explain them so that the jury and counsel may know what they are; and then he can take them back to the department as they are original papers and he wants to have the custody of them. The officers of the department have custody of original papers.

The COURT. They ought to be here during the trial.

Mr. MERRICK. They will be accessible at any moment. Whatever your honor desires shall be done.

The COURT. I think at the beginning that you called witnesses to prove the whole course of proceedings in the department including the issuing of these warrants.

Mr. MERRICK. Yes, sir.

The COURT. Do you want him to describe the manner of issuing the warrants?

Mr. MERRICK. Oh, no; only what they are generally.

Q. They can remain there in charge of the clerk, can they not?—A. It would be necessary to make copies to retain in the department if they go out of my custody.

Q. Can they not remain here temporarily by the permission of the auditor?—A. Yes, sir; the auditor can give the permission, I suppose.

The COURT. If the court directs that they shall remain in the custody of the clerk, I suppose that would indemnify the witness?

Mr. MERRICK. Certainly.

Mr. TOTTEN. If the court please, we want to have the privilege of looking at all these papers used in this case whenever we wish to. We are placed at a great disadvantage. We have on several occasions called for papers, and they were not here.

The COURT. If they are in the custody of the clerk——

Mr. TOTTEN. [Interposing.] Your honor, I think, is mistaken about that. They are carried away every day, and sometimes they are brought back and sometimes not. Here are a large number of drafts which have

been paid, I have no doubt. They are brought here and introduced as testimony, being original papers. Now, because they are the records of the Post-Office Department is no reason why we should be deprived of looking at them to-morrow or next day or next week. The trouble is that instead of providing certified copies of the papers, they have brought the original here to save trouble and expense. That is all right enough; but we cannot be damaged by that effort at economy.

The COURT. The party that produces the paper and gives it in evidence is the party who has the custody of the paper.

Mr. TOTTEN. That is right.

The COURT. Each party has that right. When you come to address the jury, then the other side who wants any particular paper has a right to use it. But the lawful custody of his own testimony is in the hands of the party by whom the evidence is produced.

Mr. TOTTEN. Your honor jumps from——

The COURT. [Interposing.] But in regard to official papers such as these which are brought here under subpoena *duces tecum*, and which it is necessary to protect, I think the court ought to make an order that they shall be deposited with the clerk of the court.

Mr. TOTTEN. Your honor, I do not want to deprive the Post-Office Department, or any other department of the Government, of its records; but when I want to look at any draft or paper in that package that has been introduced by the Government, I want to know where it is, and I want to be able to get it without issuing a subpoena *duces tecum*.

Mr. MERRICK. Your honor, I stated yesterday that any papers offered in evidence were accessible with as much ease to the other side as to the side of the Government. The suggestion made just now was merely for the security of the papers and to accommodate all sides. These papers are to be kept separate from other papers in the auditor's office, but remain in his custody. Both sides have a right to go and look at them at any minute.

Mr. TOTTEN. Your honor, we do not propose to go and look at them. We want them here. We have had some difficulty in going to the Sixth Auditor's office and finding papers. They are here introduced in testimony, and I want your honor either to keep them here, or see that they are brought back.

The COURT. On second thought, it appears to me that papers like these ought not to be in the custody of the clerk. In my experience, and according to my observation, the clerk's office is not a safe place to keep papers.

Mr. TOTTEN. I am not disputing that. All I want is that these papers shall be brought here every day, when we want to look at them. We are constantly called upon to prepare for our defense, and we want to see the testimony that has been used by the other side. I do not want the custody of the papers.

The COURT. I will allow the custodian of these papers, who brought them here to take them back with him, and the court will make an order for them to be brought here when we want them.

Mr. TOTTEN. We may want them every day.

The COURT. Oh, you won't want them every day. They are safer over there.

Mr. CARPENTER. That is entirely satisfactory.

Q. Explain what they are, so that it may go on the record.—A. [Referring to a paper.] This is what we call a report; the auditor's report to the Postmaster-General, in which he certifies that there is payable——

Mr. TOTTEN. [Interposing.] Wait a moment; don't tell us what the paper says; we want to look at it and see.

The COURT. You need not read the paper.

Mr. MERRICK. He is not reading the paper.

The COURT. He need not describe it.

Mr. MERRICK. It is only that we may know generally what it is.

The COURT. The paper speaks for itself.

Mr. MERRICK. I only want to get it, in a short way, on the record. My purpose is for the benefit of both sides.

The COURT. Very well. They were offered in evidence, and, no objection being made, they were received in evidence, and the minutes of the testimony show what they were. The court will have them here for the use of either side when they want them.

Mr. MERRICK. If there is any objection to the question I will not discuss it. [To the witness.] As I understand, you are directed by the court to take charge of these papers, and to keep them separate from all other papers, allow each side to have access to them, and bring them here whenever the court orders.

The COURT. I do not make any order about access there. I do not control the department in that matter; but when these papers are wanted the court will make an order to have them brought here.

Mr. MERRICK. There was a letter offered by Mr. Hine, which he read to the jury and which I never read, which contained a statement from Mr. Nightingale in reference to the increased distance on account of the post-office of Cedarville.

The COURT. Yes; that was sixty miles.

Mr. MERRICK. Something about sixty miles. I have not read that letter. I want to show it to Mr. French, while he is here. He is said to have signed the letter. None of the letters offered by that side apparently can be found.

The COURT. I remember that letter very well.

Mr. MERRICK. I want to show it to the witness who wrote it.

The COURT. The witness is not here.

Mr. MERRICK. He is here. I have sent for him.

Mr. WILSON. If your honor please, I find that Colonel Totten was under a misapprehension as to what papers Mr. Merrick was talking about a moment ago. I entirely agree with Mr. Merrick that it would be better to put a brief statement of what these drafts are upon the record. As, for example, I would suggest that we state that here [taking up a draft] is warrant No. 11535, for \$683.50, dated November 6, 1878, payable to John M. Peck, signed by D. M. Key, Postmaster-General, and countersigned by A. U. Wyman, assistant treasurer. Indorsed on the back, "Pay H. M. Vaile, treasurer, or order, John M. Peck. Pay Barthalow, Lewis & Co. or order, H. M. Vaile, treasurer. Barthalow, Lewis & Co. Frank T. Iglehart, cashier."

The COURT. We do not want the witness to tell us that. I have no objection to it.

Mr. MERRICK. I thought it was a good plan to have him do it.

The COURT. Let the reporter take the papers and note the particulars of description.

Mr. WILSON. I suggest that for the convenience of all parties, and to facilitate this case this may be done. If your honor says I may do it, I will do it. I will take them up one by one and go through with them.

Mr. MERRICK. I wish you would. That was my only object.

The COURT. Let us not take any time. Hand them to the reporter.

Mr. WILSON. He cannot do it while we are taking other testimony. I will run through with them quickly.

The COURT. Very well.

Mr. WILSON. The first is draft No. 11535, for \$683.50, dated November 8, 1878, payable to John M. Peck, and signed by D. M. Key, Postmaster-General. Indorsements: Pay H. M. Vaile, treasurer, or order, John M. Peck. Pay Barthalow, Lewis & Co., or order, H. M. Vaile, treasurer. Barthalow, Lewis & Co. Frank T. Iglehart, cashier.

No. 14004, for \$1,105.92, dated January 22, 1879, payable to H. M. Vaile, assignee of John M. Peck, signed by D. M. Key, Postmaster-General. Indorsements: Pay John J. Cisco & Son, or order, H. M. Vaile, assignee of John M. Peck. For deposit in the National City Bank, John J. Cisco & Son, B. Pattere.

No. 2617, for \$1,116.97, dated April 15, 1879, payable to Lewis Johnson & Co., assignees of John M. Peck, signed by D. M. Key, Postmaster-General. Indorsements: Pay to the order of National Park Bank of New York for account of Lewis Johnson & Co.

No. 5906, for \$1,011.06 dated July 16, 1879. payable to W. N. Roach, cashier of the Citizen's National Bank, assignee of John M. Peck, signed by Thomas J. Brady, Acting Postmaster-General, and indorsed by Roach, cashier, Citizen's National Bank.

No. 29218 for \$1,790.25; dated October 20, 1879. Payable to J. A. J. Creswell, president Citizens' National Bank, assignee of John M. Peck. Signed by D. M. Key, Postmaster-General, and indorsed by John A. J. Creswell, president Citizens' National Bank.

No. 12862 for \$2,177.60; dated January 22, 1880. Payable to Thomas C. Pearsall, cashier of the Citizens' National Bank of Washington, D. C., assignee of John M. Peck. Signed by D. M. Key, Postmaster-General, and indorsed by Pearsall, cashier.

No. 3293 for \$2,073.65; dated April 15, 1880. Payable to J. A. J. Creswell, president of the Citizens' National Bank of Washington, D. C., assignee of J. M. Peck. Indorsed by Creswell.

No. 6942 for \$2,020.67; dated July 21, 1880. Payable to Thomas C. Pearsall, cashier of the Citizens' National Bank at Washington, D. C., assignee of John M. Peck. Signed by Thomas J. Brady, Acting Postmaster-General. Indorsed by Pearsall, cashier of the Citizens' National Bank.

No. 10881 for \$1,815.50; dated October 16, 1880. Payable to Thomas C. Pearsall, cashier Citizens' National Bank of Washington, D. C., assignee of John M. Peck. Signed by James M. Tyner, Acting Postmaster-General. Indorsed by Pearsall, cashier.

No. 1350 for \$1,820.92; dated January 18, 1881. Payable to H. M. Vaile, subcontractor, or order. Signed by James M. Tyner, Acting Postmaster-General. Indorsed by Pearsall, cashier, and H. M. Vaile, subcontractor.

No. 5944 for \$1,616.04; dated May 3, 1881. Payable to H. M. Vaile, subcontractor. Signed Thomas L. James, Postmaster-General. Indorsed H. M. Vaile, subcontractor, Pearsall, cashier, and H. Bunker, cashier.

No. 2071 for \$1,001.20; dated August 8, 1881. Payable to H. M. Vaile. Signed by Thomas L. James, Postmaster-General, and indorsed by H. M. Vaile to the Citizens' National Bank, Washington, D. C.

Q. Mr. Wilson has just read to the jury the warrants. Will you state what other paper that is apparently accompanying the warrant?

—A. The report of the auditor.

Q. Upon which the warrant is made up?—A. Yes, sir.

Q. Those warrants are for the amount due other than upon the about which we have now been talking.—A. Yes, sir.

Q. Does the report of the auditor show the amount due for each respective route?—A. Yes, sir.

Q. And the report of the auditor attached to the warrant will show what specific amount of that warrant is on account of 34149?—A. Yes, sir.

CROSS-EXAMINATION.

By Mr. HINE :

Q. Does the report of the auditor show the reductions that were from quarter to quarter upon these routes?—A. Yes, sir.

CHARLES H. FRENCH, recalled and examined.

By Mr. MERRICK :

Q. [Submitting a paper.] Look at the letter I now hand you, marked "45 A," for the defendants, and which is proved to be in Mr. Niggle's handwriting, signed by him with your name and by your authority, and explain what is the meaning of the sixty miles you speak there?

Mr. HINE. I object to this question. The letter speaks for itself.

The COURT. Yes; I do not think that that is right.

Mr. MERRICK. I put the question in a very blunt shape, not for the purpose of adding to the writing or taking from the writing, but for the purpose of relieving what is manifestly according to the theory of the other side in relation to it an ambiguity in the letter. It is written by another man for him, signed by the other gentleman in his name, and I merely want him to state what he means by sixty miles; whether he means sixty miles from Cedarville to Loup City or sixty miles from any other point to any other point.

The COURT. It is objected to.

Mr. TOTTEN. The gentleman's object is evidently to show that it does not mean sixty miles.

Mr. MERRICK. Counsel is about as near right in his understanding now as he was just now when being corrected by his associate.

Mr. TOTTEN. I am right now, and was then.

Mr. MERRICK. Your associate said you were not.

The COURT. We have had enough of this.

Mr. MERRICK. This is the letter:

JOHN M. PECK, Esq :

DEAR SIR: I would most earnestly request of you to use every effort to cause the furnishing of Cedarville on said route to be discontinued, as the road there is rough and precipitous, and also that it has to be supplied by a side mail, causing travel of sixty miles at least. If you cannot do this, be so sure, &c.

Q. How did that cause travel of sixty miles?

Mr. TOTTEN. Wait a minute.

The COURT. I do not think you can call the witness to interpret the language of the letter on its face. You might call upon him, it seems to me, to ascertain whether the language of the letter complied with the instructions which he received from French, under which the letter was written; that is, whether this was a mistake, supposing it was a mistake—

Mr. MERRICK. I do not want to make it a mistake.

The COURT. I know—whether the letter was written in the sense that you want to explain away; whether the letter in that sense was a compliance with his instructions from his employer.

Mr. CARPENTER. This man Nightingale wrote the letter by the direction of the witness.

The COURT. Oh, no.

Mr. MERRICK. It is in Nightingale's writing, and his name is signed by Nightingale.

The COURT. Then, he might be competent to prove that he gave no instructions to Nightingale to write such a letter as that, with that meaning.

By **Mr. MERRICK**:

Q. What instructions did you give to Nightingale in reference to matters of distance to be traveled when you directed him to write this letter?

Mr. HINE. I object to that question. I object to it because it is not a matter of special importance to my client what instructions were given by Mr. French to Mr. Nightingale. We received the letter, and we have a right to rely upon it as stating the truth. We did rely upon it.

Mr. MERRICK. Did rely upon this letter?

Mr. HINE. We did rely upon his stating the truth in the letter, and had a right to rely upon it.

The COURT. It seems to me not worth disputing about. To my mind the meaning of that letter is that the whole distance traveled from Kearney to Cedarville was sixty miles or thereabouts, and not the distance between Kearney and Loup City.

Mr. MERRICK. That is not what Mr. Hine says is the meaning of it.

The COURT. He may seek to put a different interpretation upon it, but as it is a written and printed paper, if it is left to the court to give instructions upon it, I would say that the meaning is indisputably that it meant the whole route from Kearney to Cedarville, by the way of Loup City.

Mr. TOTTEN. It is a fact for the jury to find.

The COURT. No, sir; it is a written paper.

Mr. TOTTEN. Your honor says it is not a fact for the jury?

The COURT. No, sir; it is not.

Mr. MERRICK. Now, you see what I was after. And they said they acted on the letter. That was not the object of it. The object was to impeach this man in all his other statements.

The COURT. It is a written paper, and I suppose every written paper is for the court. I do not think that that will bear any dispute.

Mr. CARPENTER. It is a legal fact.

The COURT. The interpretation of what the paper means is for the court.

Mr. MERRICK. I think I may be permitted to state, of course, with your instructions, what it means.

The COURT. It is not worth while to spend any more time about it. We have all the facts in regard to the distance between Kearney and Loup City, and we know that that is forty-eight miles, and we know the distance according to the other testimony. The distance between Loup City and Cedarville is sixteen miles, and, at any rate, not more than seventeen or eighteen miles.

Mr. MERRICK. Forty-eight miles to Loup City and sixteen miles to Cedarville?

The COURT. It would be absurd to say in the face of the testimony that we have that the distance from Kearney to Cedarville is sixty miles——

Mr. MERRICK. [Interposing.] The distance from Loup City to Cedarville.

The COURT. Such a proposition as that is not worth while spending time upon.

Mr. MERRICK. I have to meet these points as they go along, of course. That is all Mr. French. There is one other slight piece of evidence that I have not quite prepared from the department in connection with these payments, these receipts, which I can put in in the morning. It is a matter of form, and with that evidence I close route 34149. I do not think of anything else on route 34149 at present.

Mr. HENKLE. Will you not be kind enough to recall Mr. French to ask him a single question?

Mr. MERRICK. If you want him you may have him. I am done with him.

The COURT. Oh, yes; you can put your question to him.

CHARLES H. FRENCH, recalled for further cross-examination.

By Mr. HINE:

Question. Did you ever see Mr. Vaile or Mr. Miner before you saw them in this court room?—Answer. No, sir.

Q. You never had any conversation with them, of course, if you never saw them?—A. I have never spoken with the gentlemen yet.

Q. You do not know them personally?—A. No, sir.

Mr. HINE. That will do.

Mr. MERRICK. There is another witness on the Kearney to Kent route whom I desire to examine—Mr. Grimes, the postmaster.

RALPH GRIMES, sworn and examined.

By Mr. MERRICK:

Question. Where do you reside?—Answer. Kearney, Nebraska.

Q. What position do you occupy?—A. I am postmaster there.

Q. How long have you been postmaster?—A. Eight years.

Q. Do you know route 34149?—A. I do, sir.

Q. The route from Kearney to Kent?—A. Yes, sir.

Q. What is the distance from Kearney to Kent?—A. I think about one hundred and six miles. I do not know the exact distance.

Q. You are familiar with the locality and the direction of the road, are you?—A. Yes, sir.

Q. [Submitting a map to witness.] Is that about a correct map?—A. I should say it was; yes, sir.

Q. Where is Fitzalon?—A. Fitzalon is between Sweetwater and Loup City.

Q. Did it add anything to the distance between Kearney and Kent to go to Fitzalon?—A. No, sir.

Q. Where is Cedarville?—A. Cedarville is, I think, a little southwest of Fitzalon, about twelve or fourteen miles. It may not be that far.

Q. How is Cedarville supplied?—A. At present it is supplied from Loup City, a side route.

Q. A side supply?—A. A side supply.

Q. What was the time in 1878 and what is the time now over the

route?—A. I do not recollect the time in 1878; I suppose it was thirteen hours' schedule. It has always been made in thirteen hours.

Q. It has always been made in that time?—A. Yes, sir.

Q. Do you recollect when the time was expedited by the Post-Office Department?—A. No, sir.

Q. Has there ever been any change in the time over that route?—A. No, sir. You mean the time between Loup City and Kearney?

Q. Yes.—A. There never has been any change.

Q. What time was made on that route from Loup City to Kearney in 1878?—A. Inside of thirteen hours.

Q. I mean from Loup City to Kearney?—A. It was always made in a day; somewhere about thirteen hours.

Q. What time do they make it in now?—A. In the same time.

Q. Is there any road by which the distance from Kearney to Loup City could be made seventy-five miles?—A. No, sir; not by the road. There is no way to get there and make it that distance by any road that I know of.

Q. Do you know what force, in the way of horses and men, was used on that route from Kearney to Loup City?—A. No, sir; I do not.

Mr. TOTTEN. If the court please, I want to make a suggestion. The indictment itself and the records show that this map is false. The route established by law, advertised and contracted for, went from Kearney to Sweetwater, and from there to Cedarville, around two sides of a triangle. This map is made to show that the route, instead of going to Cedarville, goes first to Loup City and then runs back. Now, that is not correct. That is going into the examination of this question relative to route 34149, in a wrong way and upon a false theory. It is not recognized as a route from Kearney to Loup City and thence to Cedarville at all. I object to this testimony being given to the jury upon that basis. The records of the Post-Office Department, and all the testimony that we have, go to show that the routes did not go from Kearney directly to Loup City, but it went from Kearney to Sweetwater and thence to Cedarville, and subsequently the small distance between Sweetwater and Fitzalon was taken in—the distance of six miles.

The COURT. Undoubtedly the advertisement was so.

Mr. TOTTEN. Yes; and the contract is so, your honor, and so is the indictment, and the subcontract, too—all of them; so that we are inquiring about something that has nothing in the world to do with this case.

The COURT. It was proved that the way in which the mail was carried—

Mr. TOTTEN. That was a matter that the mail-carrier did. He is not responsible, and we are not bound by it.

The COURT. Perhaps not.

Mr. TOTTEN. Of course not. He had no business to do that, your honor. He is bound to carry the mail from Sweetwater across to Cedarville, and if he did not do it he should have been fined. The result of it was that the mail did not go to Cedarville until long after it reached the terminus of that route.

The COURT. Mr. Peck, the contractor, was to carry the mail according to the contract.

Mr. TOTTEN. Unquestionably.

The COURT. He sublet the contract, and instead of going by the exact point prescribed by the contract, the mail ran up to Loup City and ran across to Cedarville.

Mr. CARPENTER. The subcontract provides the original contract.

The COURT. Yes; I know that; but the way it was in fact done is what I say; first to Loup City and then off to Cedarville.

Mr. TOTTEN. What has that got to do, your honor, with Brady and Turner? They govern themselves by the records of the department, and by these other people. Now, you may possibly hold John W. Dorsey, because he has written something about it, if they show that. But we are to try this case upon the indictment, the charges that are made against us, and the record of this route is established by law.

The COURT. We have received so much evidence on this subject that we will see what this last witness has to say.

Mr. TOTTEN. It is hardly worth while to take up the time of the court. We have got to strike it all out hereafter. We are hearing constant complaints about going so slow.

The COURT. We will strike it all out together then.

Mr. MERRICK. Gentlemen, the witness is yours.

CROSS-EXAMINATION.

By Mr. HINE:

Q. Were you the postmaster prior to this last contract?—A. Yes, sir.

Q. How long have you been postmaster there?—A. Eight years.

Q. Did you receive notice from the Post-Office Department prior to or about July 1, 1879, of the expedition of this route, increased to three times a week and run on a schedule of thirteen hours?—A. Yes, sir.

Q. You received that?—A. We received that; yes, sir.

Q. Did you communicate that fact to Mr. French?—A. I do not remember whether I did or not.

Q. You do not recollect?—A. No, sir; I do not.

Q. Was it not your duty to do that?—A. No, I think not, if they called for the mail on time, which they did.

Q. Did Mr. French uniformly carry that mail on time?—A. Yes, sir; always.

Q. He always carried it on a schedule of 13 hours?—A. Yes, sir.

Q. He made no failure as to time, then?—A. He made no failures, except when there were bridges washed out, or something of that kind, when he could not get over them. He did in cases of that kind.

Q. It was in the line of your duty to report to the department every quarter the condition of that route, was it not?—A. Every month.

Q. You made a monthly report?—A. I made a monthly report.

Q. Showing the time that was made and the failure to carry?—A. Yes, sir.

Q. That includes the time of departure and the time of arrival?—A. Yes, sir.

Q. Now, Mr. Grimes, the distance, you say, from Kearney to Loup City is forty-eight miles?—A. Yes, sir.

Q. Was it ever surveyed, to your knowledge?—A. Yes, sir.

Q. Was it not surveyed by the Government officers?—A. Yes, sir.

Q. And that survey was transmitted to the Post-Office Department was it not?—A. I think not, sir.

Q. Do you not recollect the advertisement that was sent out by Post-Office Department for letting this route in the fall of 1877?

A. Yes, sir.

Q. Do you recollect how that advertisement described this route the distances?—A. I do not.

Q. Do you recollect whether or not it describes it as one hundred and twenty-five miles?

The WITNESS. To Kent?

Mr. HINE. Yes.

A. Well, I think it did; I think I was mistaken about that.

Q. Have you not certified, as postmaster, that the distance from Kearney to Kent is one hundred and twenty-five miles?—A. No, sir.

Q. Have you not certified that it was one hundred and thirty-one miles from Kearney to Kent?—A. I have not, sir.

Q. Has it been a part of your duty to certify the distances between the termini of routes?—A. No, sir; it never has.

Q. Now, it was advertised, was it not, in 1877, and the bids were put in and contract let, as you understand it, from Kearney to Kent, as one hundred and twenty-five miles, was it not?—A. Yes, sir; I think it was, since I come to remember the fact.

Q. And the distance from Kearney to Loup City was seventy-five miles, was it not?—A. I think not, sir. I have no recollection of that.

Q. Now, the way it was advertised was from Kearney to Sweetwater, and from Sweetwater to Cedarville, and from Cedarville to another post-office south of Loup City, and then to Loup City, was it not?—A. I do not remember whether it went that way or not.

Q. You do not recollect whether the mail was taken that way or not first?—A. I recollect it never was.

Q. Wasn't it advertised so?—A. I think it was so advertised. I do not know about the advertisement.

Q. When did you first learn the fact that the mail was not taken by Sweetwater, through Cedarville, to Loup City?—A. The first time the mail went over the road.

Q. What kind of a road was there from Sweetwater to Cedarville?—A. A very fair road.

Q. You have been over the road from Sweetwater to Cedarville?—A. Yes, sir; I was over the country before there was a road. I have not been there since there has been a Cedarville.

Q. What kind of country is it from Sweetwater to Cedarville?—A. It is up the bottom of Beaver Creek. It is a very fair road.

Q. And can be easily traveled?—A. Yes, sir.

Q. Are there any high hills or precipitous hills or deep ravines?—A. Yes, sir; there are some.

Q. But it is a route that is very easily traveled?—A. Yes, sir.

Q. How recently have you been over that route?—A. I think about nine years ago, sir.

Q. What is your information, now, in reference to the road from Sweetwater to Cedarville during the last three or four years?

Mr. MERRICK. Wait a moment. What is his knowledge?

The COURT. [To Mr. Hine.] You cannot ask that question.

Q. [Continuing.] I will go back a little. Was it not your duty and did not you post up the advertisement for this route in the fall of 1877?—A. I did, sir.

Q. That was made your duty, was it not, by instructions from the Post-Office Department?—A. Yes, sir.

Q. And were you notified who the contractor was?—A. Yes, sir.

Q. At once, after the contract was made?—A. Yes, sir.

Q. And the points to which it was to be carried, together with the schedule of time between the different points?—A. The schedule between Kearney and Loup City.

Q. Did you not have it also clear through from Kearney to Kent?—A.

Not the schedule of other offices; there was no other office mentioned except Kearney and Loup City.

Q. Was there not in the schedule furnished you by the department the names of the different post-offices and the time prescribed between the different post-offices?—A. No; I think not.

Q. Did not the advertisement that you were required to post in the public office contain the distances between the two points, Loup City and Kearney?—A. I think it did.

Q. What was that distance?

Mr. BLISS. I am going to object to any examination of what the advertisement was. The advertisement is in print. I hold it in my hand here.

The COURT. I do not see any end to it.

Mr. BLISS. Here is the advertisement, if you haven't it here, Mr. Hine.

Mr. HINE. There are two grounds upon which I have a right to ask the question. The witness has testified as to every subject-matter about which I am inquiring. I have a right to test his memory; to test his recollection of facts connected with this thing. He testified as to certain isolated facts. Those isolated facts are not sufficient.

The COURT. He has testified as to the time he has been there and as to the distance which he knows between one point and another. He has given no testimony in regard to advertisements by the Post-Office Department, or anything of that sort. He merely says that he posted up the advertisement in the office in obedience to his orders.

Mr. CARPENTER. He has testified that he received the schedule of the route from the department.

By Mr. HINE:

Q. [Resuming.] You recollect as a fact that the schedule time from Kearney to Loup City was twenty-four hours?

Mr. MERRICK. Wait a moment.

The COURT. [To the witness.] You need not answer that.

By Mr. HINE:

Q. [Resuming.] Thirty-six hours, I mean.

Mr. MERRICK. Wait a moment.

The COURT. [To the witness.] You need not answer that.

By Mr. HINE:

Q. [Resuming.] You have given us certain distances. Will you advise us what the distance is from Kearney to Cedarville by Sweetwater?—A. I think it is about forty-three miles.

Q. Forty-three miles to Cedarville?—A. I think so; it may be forty-four.

Q. And from Cedarville to Loup City is what distance?—A. Sixteen miles.

Q. You have traveled that frequently, have you?—A. Not frequently. I have been there.

Q. How recently?—A. Oh, it is about nine years since I went through that country.

Mr. MERRICK. The distance has not changed since.

Q. [Forwarding paper to witness.] I will send you this paper and ask you if you ever saw it before?—A. [After inspecting the same.] Yes, sir; I have seen that before.

Q. Did you send that to the department?—A. No, sir.

Q. Who sent it to the department, if you know?—A. The postmaster at Kent should have sent it. I do not know who that was, sir.

Q. Do you know those different signatures—the signatures of the different postmasters along the line of the route?—A. I can identify three of them.

Q. Which three; please point them out.—A. C. A. Borders, postmaster at Prairie Centre, Mrs. Lillie Hutchinson, postmistress at Sweetwater, and A. Flint, postmaster at Cedarville. I identify those, sir.

Mr. HINE. That paper has not been read to the jury. I will read it to the jury with the permission of the court. It is the distance circular of the Post-Office Department:

Distance circular.

UNITED STATES POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, 1st June, 1878.

SIR: To preserve the accuracy of the route books of the department, the Postmaster-General requests the insertion in the comments below, of the official names of the post-offices on route No. 34149, between Kearney and Kent, to be written in the order in which they are situated, and with the distance of one office to another.

Each postmaster will give the distance of his office from the post-office immediately preceding, certifying the same by his signature. Fulfill this duty promptly and return the paper without delay to this office.

Respectfully, &c.,

THOMAS J. BRADY,
Second Assistant Postmaster-General.

To J. M. PECK,
Lock-box 714, Washington, D. C.

Distance from Kearney to Prairie Centre, ten and a half miles; from Prairie Centre to South Loup, left blank; from Prairie Centre to Centennial, fifteen and a half miles; Centennial to Sweetwater, six miles; Sweetwater to Cedarville, twelve miles; Cedarville to Loup City, sixteen miles; Loup City to Arcadia, sixteen miles; Arcadia to Douglas Grove, ten miles; Douglas Grove to Kent, twenty-four miles; total, one hundred and sixteen miles.

Mr. BLISS. You have not read the whole, Mr. Hine. Each postmaster signs as certifying to the distance from the preceding station.

Mr. HINE. I will read every name in the order, then:

B. A. Grimes, C. A. Borders, F. J. Platt, Mrs. Lillie Hutchinson, Albert Flint, William Baillie, B. H. Hawthorn, S. Comstock.

Mr. BLISS. It should be stated, unless this paper be shown to the jury, that each postmaster does not certify to the aggregate at the bottom, but certifies to the distance from the station preceding his own.

Mr. HINE. Exactly.

Mr. BLISS. You did not read it as if it was so.

Mr. HINE. I read it in order. This will be identified, of course, the same way [referring to another paper]. Omit the heading on the same route, and of the same date, 1st of June, 1878: Distance from Sweetwater to Fitzalon, seven and a half miles, Mrs. Lillie Hutchinson signs; from Fitzalon to Cedarville, nineteen and a half miles, signed O. F. Brown. This is needed in addition to report of routes as let.

Mr. MERRICK. Let me look at that.

Mr. HINE. Certainly [submitting paper].

Mr. WILSON. I want to show this to the court, and say a word in explanation, as Mr. Bliss has said something. We have been consuming three or four hours' time over a matter where the files of the department show all about it. Now, there is a circular sent out for the purpose of ascertaining distances. As Colonel Bliss has said, each postmaster certifies as to the distance from his post-office to the next.

one. And then it goes along the line, and that shows exactly the length of the line. Now, there is the official record as to this route, Your honor will see that the road ran around by Cedarville. Now, then, as to Fitzalon. Here is another of these papers.

The COURT. What has this witness to do with it?

Mr. WILSON. Nothing, excepting that he signed his name as one of the postmasters.

Mr. MERRICK. To a certain part of the route. He has not signed that at all. [Referring to paper in counsel's hands.]

Mr. WILSON. He has nothing to do with it.

Mr. HINE. He has something to do in reference to the distance between the two points.

The COURT. He has been examined as a practical man as to his own knowledge of the distance. But as to the means the Post-Office Department used in making its own contract, that is a thing he has no knowledge about and nothing to do with.

Mr. HINE. This is used to refresh his memory. He has testified very generally, and perhaps it may be better——

The COURT. [Interposing.] That does not make this competent.

Mr. HINE. He signed it; made a part of it.

Mr. BLISS. As to one station only, sir—one distance, eight or ten miles.

The COURT. He is not bound by anything except what he signed for, and that is one distance. If you want to contradict him by this paper as to that distance, very well; it is fair subject of cross-examination.

Mr. HINE. I want to refresh his memory, and if it contradicts him as to the whole distance he has testified to, we cannot help it.

Mr. BLISS. Ask him if, after refreshing his memory, he wants to change his testimony as to the distance from Kearney to this place you are speaking of.

By Mr. HINE:

Q. [Resuming.] Now, Mr. Grimes, having looked over that, what have you to say as to the accuracy of those different estimates?—A. Well, I should think they were correct. I do not know why they should not be. I know mine is. I have certified as the postmasters generally do.

Q. You think all the rest is correct?—A. I should think they would be.

The COURT. In what respect do they differ from the testimony given?

Mr. HINE. From Kearney to Loup City it has been testified is forty-eight miles.

Q. [Resuming.] Will you tell us how much the distance was increased by reason of adding Fitzalon?—A. It was not increased any, sir.

Q. It was not?—A. Not a rod.

Q. [Submitting paper to witness.] I will hand you this paper——

Mr. BLISS. [Interposing.] I object to the exhibition to the witness of that paper. His name does not appear on it. He has nothing to do with it.

The COURT. Did you ever see that paper before?

The WITNESS. No, sir; I think not. These do not come to me anyway. I have nothing to do with them.

By Mr. HINE:

Q. [Resuming.] On this route that you have been speaking of from Kearney to Loup City, was there such a post-office as Verdurett?—A. No, sir. There is such a post-office on the route, or very near to it, but it is not supplied on that route. It is supplied on a route which goes

into Loup City from another direction. But this line passes nearly directly by it, and perhaps on the map it would appear on this route.

Q. I understood you to say that you had nothing to do with the whole line of the route between Kearney and Kent; that you had only to do with the distance between your post-office and the next nearest post-office.

The WITNESS. In what respect?

Mr. HINE. In respect to making reports to the department?

A. No, sir; I have the whole line from Loup City.

Q. Then you do know something about the whole line?—A. I know all about it.

Q. Do you know of any change having been made; were you advised by the Post-Office Department of any change having been made in the contract for carrying the mails between Kearney and Kent?

The WITNESS. In regard to the time?

Mr. HINE. In regard to the change of the route.

A. Not excepting they added two trips a week, making it tri-weekly.

Q. Do you know anything about the schedule of time?—A. Yes, sir.

Mr. MERRICK. He testified about that. He said there was a change.

Q. [Continuing.] That is all the change that you know of having been made by the department in the contract under the advertisement?

—A. Yes, sir.

Q. [Forwarding a paper to the witness.] That is your report, is it?—

A. [After examining the same.] I signed that report; yes, sir.

Mr. MERRICK. Let me look at that.

The paper was submitted to Mr. Merrick for inspection.]

Mr. HINE. I will read this.

The paper certifying that the service had been regularly and properly performed according to schedule from Kearney to Kent was then read by Mr. Hine, in which the failure of the contractor on June 20 was reported because he arrived twenty-four hours ahead of time.]

The COURT. That was a remarkable failure.

Mr. HINE. We will make such use of it as is proper.

Mr. BLISS. We will not object to their identifying any of these papers; but we object to their putting in any papers of this sort now.

The COURT. The witness has admitted that he made that report.

Mr. BLISS. It is not an official report.

The COURT. He made it to the Post-Office Department; he said so.

Mr. BLISS. I think not, sir.

The COURT. I understood the witness to say that.

Mr. BLISS. I do not know how these gentlemen got these papers.

Mr. HINE. I will ask the gentleman if one is not sent to the contractor, and one to the Post-Office Department, under the rules of the department.

Mr. BLISS. My point is that that is properly a portion of their case, and it is not proper to introduce them under these circumstances. We do not object to their putting in official records at this stage. We do object to their pushing in private papers at this stage.

The COURT. I understood this paper was presented to him, first, to ascertain whether he made that report; and then, if he made it, to offer it in evidence for the purpose of contradicting what he is saying now. Whether they are contradicting him or not, is another thing.

Mr. BLISS. I simply raise a question of order, whether it is proper to put it in at this stage of the proceeding.

The COURT. They are putting it in simply as affecting the credibility of this witness now. How far it goes that way is for the jury.

Mr. HINE. This is a report on the same route, of the same witness.

[Mr. Hine then read a report signed by R. M. Grimes, dated October 7, 1879, certifying to the performance of the contract according to schedule on route 34149 from Kearney to Kent.]

Q. Now, it was your duty to report to the department every failure that occurred either in the mails going out or coming in?—A. Yes, sir.

Q. Either in the number of trips or in schedule time?—A. Yes, sir.

Q. And you made such reports, did you?—A. I did, sir.

Q. And did the department send to you reports as to deductions to be made?—A. It did not.

By the COURT:

Q. I would like to know what sort of a failure that was where you reported that the mail arrived twenty-four hours ahead of time?—A. I can explain it.

Q. I suppose it came on a day to which it did not belong. You can make your explanation.—A. The driver started out from Loup City with the stage, on time, the day before, and the bridge being down at Sweetwater, he had to go by Cedarville, and he got lost on the prairie and was out all night. Came pretty near losing his horse and killing a passenger.

By Mr. HINE:

Q. Is that what you mean by getting in twenty-four hours ahead of time?—A. He got in twenty-four hours ahead of when the next stage should have arrived.

Q. Was that failure this same quarter that you were reporting about?—A. Yes, sir. We did not know which stage it was; whether it was the one that left on time or whether it was the one that left the day before, because there was no road there.

Q. Was it that same quarter that he got lost on the prairie?—A. I think it was; yes, sir.

Q. Why did you not report it?—A. I did, sir.

Q. [Exhibiting a paper.] Is this the report?—A. No, sir; that is not an official report.

Q. Then you did know the schedule time when you made these reports to the department, did you not?—A. Certainly; I had to know it.

Q. What is your recollection of that schedule time?—A. The schedule time from Loup City to Kearney was thirteen hours, and they generally got it in in about ten and a half or eleven hours.

Q. That was the schedule time as advertised by the Government?—A. Yes, sir.

Q. Now, when did the Government institute that schedule time of thirteen hours?—A. I think it was 1879, or perhaps in 1878.

Q. And the mail had been running there a year before had it not?—A. It had.

Q. What was the schedule time then?—A. I think they allowed them about twenty-four hours.

Q. Was it twenty-four or thirty-six hours?—A. It may have been thirty-six; I cannot say positively about that.

Q. The schedule time from Kearney to Kent was sixty hours?—A. It was three days.

Q. When did you first hear of the reduction of schedule time?—A. I first heard of it when the service was increased to three times a week.

Q. And did you communicate that to the carrier of the mail?

Mr. MERRICK. That has been asked once before upon the same side.

Mr. WILSON. Now, if your honor please, I think it will conduce to the getting of order out of confusion to put in this paper, which is a part of the files of this case. I think it is due to the case that the files pertaining to this particular route shall all go in evidence. This is the distance circular after adding on Fitzalon, which shows the distance to Fitzalon, and then from Fitzalon over to Cedarville. After Fitzalon is added to the route then you have the complete length of the route as shown by the records of the department.

Mr. BLISS. We do not object to it.

Mr. MERRICK. Oh, no.

The COURT. Let it go in then.

[The paper was handed to the clerk and by him marked 71 A.]

Mr. MERRICK. Now, your honor, with the exception of the paper I spoke of we are through with this route.

The COURT. One-nineteenth of the case.

Mr. MERRICK. One-nineteenth of the routes, but not one-nineteenth of the case; it is about one-thirtieth of the case.

The COURT. I overstated it. I hope, as we go on, our facility in managing the case will improve. We have made very slow progress so far.

Mr. MERRICK. All the questions of evidence are pretty well disposed of on this route, I believe.

The COURT. What is the next?

Mr. BLISS. The next route, your honor, is route 38135, from Saint Charles to Greenhorn.

Mr. MERRICK. [To the jury.] Now, gentlemen, if you will just put up those maps I will give you some new ones. [Handing maps to the jury.]

Mr. WILSON. I want to see those maps before they are distributed to the jury.

Mr. MERRICK. I thought we agreed that the jury could have them.

Mr. WILSON. Yes; but I want to see them.

[The maps were submitted to counsel for defense.]

Mr. TOTTEN. I would like to know from the gentlemen before this map is distributed, whether they think it is correct or not. The last was conceded to be incorrect.

The COURT. They will have to prove it.

Mr. TOTTEN. Very well. Let them prove it. We do not want to have them indict us for carrying the mail on one route and then bring in another route entirely.

Mr. BLISS. We have received these from the Post-Office Department and believe them to be correct. We do not say they are absolutely correct.

Mr. TOTTEN. Nobody could have believed the other to be correct.

Mr. BLISS. We will prove the map hereafter and will keep our own maps.

Mr. TOTTEN. As a matter of fact, there was an order made last February changing that route from what it was originally to what it now is as shown by your paper.

Mr. BLISS. We have had the map made precisely as the route has been run.

Mr. TOTTEN. If you made a map of the route for next year, it would probably be just as accurate as this is.

Mr. BLISS. We will not have any discussion. Hereafter we will

prove the map. We will withdraw these, if you desire. We do not propose to furnish you with maps hereafter.

Mr. TOTTEN. Do you regard furnishing us with maps as a matter of courtesy?

Mr. BLISS. No; it is done simply because we had made the arrangement.

Mr. INGERSOLL. I ask that they be withdrawn from the jury until they are proved.

Mr. MERRICK. All right.

Mr. BLISS. Gentlemen, hand up your maps.

[The maps were withdrawn from counsel for the defense, and from the jury.]

Mr. HINE. As they are printed at public expense, we think that we, as citizens, have some right to them.

Mr. MERRICK. This case has been gotten up at very great public expense, nearly a million of dollars.

Mr. BLISS. And the expense was principally caused by their clients. The contract from Saint Charles to Greenhorn and the bid have been approved. I merely call attention to it.

Mr. WILSON. I object to his calling attention to anything. If it has been proved, it is proved.

Mr. BLISS. It has been proved in evidence. I will read it.

Mr. WILSON. No, sir; it has been read.

Mr. MERRICK. Read it again.

Mr. WILSON. If he is going to read it, I insist on his reading the whole paper.

Mr. MERRICK. Very well, if the court admits it.

Mr. BLISS. [After having read part of the contract.] There are various provisions here as to the mode in which the mail is to be carried, the wagons, &c., that I will omit unless your honor thinks I should read the whole.

The COURT. I am content that you should omit it, but the other side have rights.

Mr. BLISS. Do you desire it read, gentlemen?

Mr. HINE. Yes.

The contract, as read in full by Mr. Bliss, is as follows:

1878-'82.]

[Sandusky, Erie Co., Ohio.]

[Stamp:] Contract Office, Apr. 15, 1878, P. O. D.

UNITED STATES OF AMERICA.

No. 38135.]

[\$548 per annum.]

This article of contract, made March 15th, eighteen hundred and seventy-nine, between the United States of America (acting in this behalf by the Postmaster-General)

Insert here names of and Jno. R. Miner, contractor, and D. W. C. Wheeler, of New York, N. Y., and S. N. Hoyt, of Washington, D. C., as his sureties.

Witnesseth, that whereas Jno. R. Miner has been accepted, according to law, as contractor for transporting the mail on route No. 38135, from St. Charles, Col., by Muddy Creek, to Greenhorn and back, twice a week, at five hundred and forty-eight dollars per year, for and during the term beginning July first, eighteen hundred and seventy-eight, and ending June thirtieth, eighteen hundred and eighty-two: Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America, and do bind themselves—

1st. To carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, weight, or increase, during the term of this contract, and within the time fixed in the annexed schedule of departures and arrivals; and so to carry until said

schedule is altered by the authority of the Postmaster-General of the United States, as hereinafter provided, and then to carry according to such altered schedule; and in all cases to carry said mail in preference to passengers and freight, and to their entire exclusion if its weight, bulk, or safety shall so require. And that they will carry the mail, upon demand, by any conveyance which said contractor regularly runs, or is concerned in running, on the route, beyond the number of trips above specified, in the same manner and subject to the same regulations as are herein provided touching regular trips.

2d. To carry the mail in a safe and secure manner, free from wet or other injury, under a sufficient oil-cloth or bear-skin if carried on a horse, and in a boot under the driver's seat if carried in a coach or other vehicle.

3d. To take the mail and every part thereof from, and deliver it and every part thereof at, each post-office on the route, or that may hereafter be established on the route (or on any route that may hereafter be established and to which this contract may be extended as hereinafter provided), and into the post-office at each end of the route, and into the post-office, if one is there kept, at the place at which the carrier stops for the night, and if no post-office is there kept, to lock it up in some secure place, at the risk of the contractor.

They also undertake, covenant, and agree with the United States of America, and do bind themselves, jointly and severally, as aforesaid, to be accountable and answerable in damages for the person to whom the said contractor shall commit the care and transportation of the mail, and his careful and faithful performance of the obligations assumed herein and those imposed by law, not to commit the care or transportation of the mail to any person under sixteen years of age; to discharge any carrier of said mail whenever required so to do by the Postmaster-General; not to transmit, by themselves, or either of them; or either of their agents, or be concerned in transmitting, commercial intelligence more rapidly than by mail; not to carry, otherwise than in the mail, letters, packets, or newspapers which should go by mail, or convey or transport any person engaged in carrying letters, packets, or newspapers which should go by mail; to carry post-office blanks, mail locks and bags, and other postal supplies, and also the special agents of the department on the exhibition of their credentials, if a coach or other suitable conveyance is used, without additional charge; to collect quarterly, if required by the Postmaster-General, of postmasters on the route, the balances due from them to the United States on their quarterly returns, and faithfully to render an account thereof to the Postmaster-General in the settlement of the quarterly accounts of said contractor, and to pay over to the Auditor of the Treasury for the Post-Office Department, on the order of the Postmaster-General, all balances remaining in his hands.

For which services, when performed, the said Jno. R. Miner, contractor, is to be paid by the United States the sum of five hundred and forty-eight dollars a year, to wit, quarterly, in the months of November, February, May, and August, through the postmasters on the route, or otherwise, at the option of the Postmaster-General; said pay to be subject, however, to be reduced or discontinued by the Postmaster-General, as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may discontinue or extend this contract, change the schedule and termini of the route, and alter, increase, decrease, or extend the service, in accordance with law, he allowing a pro rata increase of compensation for any additional service thereby required, or for increased speed, if the employment of additional stock or carriers is rendered necessary; and, in case of decrease, curtailment, or discontinuance of service, as a full indemnity to said contractor, one month's extra pay on the amount of service dispensed with, and a pro rata compensation for the service retained. Provided, however, that, in case of increased expedition, the contractor may, upon timely notice, relinquish the contract.

It is hereby also stipulated and agreed by the said contractor and his sureties as aforesaid, that they shall forfeit—

1. The pay of a trip when it is not run, and, in addition, if no sufficient excuse for the failure is furnished, an amount not more than three times the pay of the trip.

2. At least one-fourth of the pay of a trip when the running is so far behind time as to fail to make connection with a depending mail.

3. For violating any of the foregoing provisions touching the transmission of commercial intelligence more rapidly than by mail; or giving preference to passengers or freight over the mail or any portion thereof, or for leaving the same for their accommodation; or carrying, otherwise than in the mail, matter which should go by mail; or transporting persons engaged in so doing, with knowledge thereof, a penalty equal to a quarter's pay.

4. For violating any other provision of this contract touching the carriage of the mails, or the time and manner thereof, without a satisfactory explanation of the delinquency, in due time, to the Postmaster-General, a penalty in his discretion. That these forfeitures may be increased into penalties of a higher amount, in the discretion

of the Postmaster-General, according to the nature or frequency of the failure and the importance of the mail. Provided, That except as herein otherwise specified, and except as provided by law, no penalty shall exceed three times the pay of a trip in each case.

And it is hereby further stipulated and agreed by the said contractor and his sureties that the Postmaster-General may annul the contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post-Office Department; for refusing to discharge a carrier when required by the Department; for transmitting commercial intelligence or matter which should go by mail, contrary to the stipulations herein; for transporting persons so engaged as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and whenever, in the opinion of the Postmaster-General, the service cannot be safely continued, the revenues collected, or the laws maintained on the road or roads herein.

And it is hereby further stipulated and agreed that such annulment shall not impair the right to claim damages from said contractor and his sureties under this contract; but such damages may, for the purpose of set-off or counter-claim, in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post-Office Department.

And it is hereby stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or other contractors shall be made by the Postmaster-General.

And this contract shall, in all its parts, be subject to the terms and requirements of the act of Congress approved April twenty-first, one thousand eight hundred and eight, entitled "An act concerning public contracts," and of the act of Congress approved June eighth, one thousand eight hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-Office Department."

In witness whereof the said Postmaster-General has caused the seal of the Post-Office Department to be hereto affixed, and has attested the same by his signature, and the said contractor and his sureties have hereunto set their hands and seals, the day and year set opposite their names, respectively.

[SEAL.]

D. M. KEY,
Postmaster-General.

Signed, sealed, and delivered by the Postmaster-General in the presence of—
J. N. DORRIS.

And by the other parties hereto in the presence of—
J. W. DORSEY,
A. A. FRIEDRICH,

Witnesses.

Signed this 8 day of Apr., 1878.

JNO. R. MINER, [SEAL.]
Contractor.

Signed this 8 day of Apr., 1878.

D. W. C. WHEELER, [SEAL.]

Signed this 8 day of Apr., 1878.

S. N. HOYT, [SEAL.]
Sureties.

POST-OFFICE, WASH., D. C.,
Ap'l 15, 1878.

I hereby certify that D. W. C. Wheeler, of New York, and S. N. Hoyt, of Washington, D. C., are good and sufficient sureties for the amount of the foregoing contract.

J. M. EDMUNDS,
Postmaster.

THE SCHEDULE OF DEPARTURES AND ARRIVALS.

Leave St. Charles Tues. & Fri. at 6 a. m.; arrive at Greenhorn by 6 p. m.

Leave Greenhorn Wed. & Sat. at 6 a. m.; arrive at St. Charles by 6 p. m.

Leave _____; arrive at _____.

Leave _____; arrive at _____.

Provided, That when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to the time fixed in this schedule.

Certificate of the oath of mail contractors and carriers, required by act of Congress of June 8, 1872, as amended by act of March 5, 1874, 18th Stats., p. 19.

[ Take this oath after signing the foregoing contract.]

I, John R. Miner, being "employed in the care, custody, and conveyance of the mail," as contractor, on route No. 38135, from St. Charles to Greenhorn, State of Col.,

do swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post-offices and post-roads within the United States, and that I will honestly and truly account for and pay over any moneys belonging to the said United States which may come into my possession or control; and I do further solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic: So help me God.

JNO. R. MINER, *Contractor*.

COUNTY OF WASHINGTON,
Dist. of Columbia, ss:

Sworn before the subscriber, a notary public for the county and State aforesaid, this — day of April, A. D. 1878; and I also certify that the person above named is above the age of twenty-one years, to the best of my knowledge and belief.

A. E. BOONE, [SEAL.]
Notary Public.

[Stamp:] A. E. Boone, notary public, District of Columbia.

NOTE.—When the oath is taken before a justice of the peace, or any other officer not using a seal, except a judge of a United States court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer.

The undersigned, — of the — court of — County, in the State of —, hereby certifies that — —, whose name is signed to the above certificate of the oath of —, is now, and was at the time of signing the same, a duly commissioned and qualified justice of the peace, authorized to administer oaths and affirmations in the State of —

[SEAL.]

— —, (Signature.)
— —, (Office.)

(Indorsed on back :) Miner. 38135. \$548.

Mr. BLISS. [While reading the contract.] I call your honor's attention to the fact that they are to deliver the mail at each post-office.

The COURT. Inside the post-office.

Mr. BLISS. Yes. I mean it does not say that they are to go in this order or that order. The contracts were not marked when they were put in evidence before.

Mr. TOTTEN. Let us have them marked now.

Mr. BLISS. That is just what I propose.

GEORGE M. SWEENEY, recalled.

By Mr. BLISS:

Question. You have already been on the stand in this case?—Answer. Yes, sir.

Q. You have been asked to produce certain papers?—A. I have.

Q. What are the papers that you now produce and where did they come from?

Mr. WILSON. Who has asked him to produce any papers?

Mr. MERRICK. I asked him.

Mr. WILSON. When?

Mr. BLISS. This morning.

Mr. WILSON. Not since he has been on the stand?

Mr. BLISS. No, sir.

Mr. WILSON. I hope we may have the benefit of an examination, and not have things done out of court. They say they have asked this witness—

The COURT. [Interposing.] They have not offered the papers. They have not been proved.

Mr. WILSON. But I want to know what they are.

No. 14336—37

Mr. BLISS. I am going to show you.

Q. Where did the papers you have in your hands come from?—A. The files of the Post-Office Department.

Q. Under your charge?—A. They have been partly under my charge part of the time. They have also been in the hands of Inspector Woodward.

[The papers in question were handed by the witness to Mr. Bliss and by him to the counsel for defense, who proceeded to examine them.]

Mr. BLISS. Have you any objection to them, gentlemen? I am going to offer them in evidence.

Mr. WILSON. Go ahead.

Mr. BLISS. I will read the jacket:

Date, June 18, 1878. State, Colorado.

No. of route, 38102, 38103, 12, 34, 35, 39, 40, 48, 50, 51.

Termini of route, Greeley and Livermore.

Length of route, 47 miles.

Number of trips per week, 2.

Contractor, John R. Miner.

Pay, \$748 per annum.

Contractor desires address changed.

Change contractor's address from Sandusky, Ohio, to lock-box 714, Washington, D. C.

Brady.

Order number 4515. Date, June 18, 1878.

Day-book, page 6.

Wrote P. M. and contractor ———, 187 .

Q. Whose handwriting is that signed to the indorsement?—A. The signature is General Brady's. The order itself is in the handwriting of Mr. William H. Turner.

[The jacket just read was marked by the clerk 1 B.]

Mr. BLISS. I will now read the next:

Date, May 9, 1879. State, Colorado.

No. of route, 38102, 3, 12, 34, 35, 40, 48, 51.

Termini of route, Greeley and Livermore.

Length of route, 52 miles.

Number of trips per week, 2.

Contractor, John R. Miner.

Pay, \$748 per annum.

Contractor requests change of address.

Change contractor's address to care of M. C. Rerdell, box 706, Washington, D. C.

Q. Whose signature is signed to that order?—A. General Brady's.

Q. Whose writing is the rest of it in?—A. William H. Turner.

Mr. BLISS. [Reading the remainder of the jacket:]

Order No. 4245. Date May 9, 1879.

Day-book, page 55.

Wrote P. M. and contractor ———, 187

Now, I will read the letter:

WASHINGTON, D. C., May 5, 1879.

Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General :

SIR: You will please address all communications relating to route

38102, Greeley to Livermore;

38103, Greeley to Sarinda;

38112, Windsor to Hahn's Peak;

38134, Pueblo to Rosita;

38135, Pueblo to Greenhorn,

38140, Trinidad to Madison;

38148, Del Norte to Summit;

38151, White Earth to Gunnison.

Then there was put in "43125, Wallula to Pleasant Grove," and that is struck out—

to the care of M. C. Rerdell, box 706, Washington, D. C.

Respectfully,

JOHN R. MINER.

[The paper last read was marked by the clerk 2 B.]

Mr. TOTTEN. What is the date?

Mr. BLISS. May 5 inside, and the jacket is indorsed May 9, 1879.

Mr. TOTTEN. Your honor will observe that this is all beyond the time when the conspiracy is alleged to have been made. We will let it go in, but I want your honor to note it.

Q. Have what are known as the files of the papers on route 38135, from Saint Charles to Greenhorn, been under your charge?—A. They were up to the 7th of September last.

Q. What then did you do with them?—A. I sent them to Inspector Woodward.

Mr. BLISS. Shall we put Mr. Woodward on the stand for the purpose of identifying them?

Mr. WILSON. If you have got all the papers, we do not want to put you to any trouble, of course.

Mr. BLISS. I suppose we have the papers.

Mr. WILSON. Let us see.

P. HENRY WOODWARD, recalled.

By Mr. BLISS:

Question. [Handing a number of papers to the witness.] Please look at those papers and state if you recognize them.—Answer. [After examining the papers.] I do.

Q. From whom did you receive these papers?—A. I received them from Mr. Sweeney.

Q. Do you know about when?—A. I could not say. Some time last summer or fall.

Q. Have they been in your custody since?—A. Yes, sir.

Q. You have kept them carefully, have you?—A. I have aimed to, as you know, I think.

By Mr. WILSON:

Q. When these papers came to you, did you preserve them in the same condition in which they were?—A. I intended to; yes, sir. What do you mean by your question?

Q. Have you made any change in the jacketing of these papers?—A. I think not; no sir.

Q. You have not?—A. With one explanation.

Mr. BLISS. He is entitled to explain.

Q. What are these papers that Mr. Bliss threw to one side?—A. Those are the jackets I had put on the outside of the original jackets. That is making no change in the papers.

Q. You have separated these papers and put them in new jackets have you not?—A. No, sir.

Q. You say every paper had a jacket corresponding to every one of those jackets when they came into your possession?—A. No, sir.

Q. Then what do you mean?—A. A large number of papers in every file have no jackets on them. That is what we call a jacket [exhibiting]. It is a paper upon which an order is based. The order here is signed by General Brady. There might be seven or eight inclosures or

less. There might be but one or there might be a dozen in that paper. The inclosed papers are the ones upon which the order is supposed to be based. It has been my aim to have every one of those papers that belonged in one of these jackets originally retained in that jacket, whereas a paper that was not jacketed at all I have had put into a jacket of that sort [exhibiting], and then the jackets have all been numbered and arranged chronologically.

Q. You say that the papers in that jacket on which the order is written are supposed to be the papers on which the order is made?—A. That is my understanding of it; yes, sir.

Q. You say they are supposed to be. Do you pretend to say that the orders were not made upon all the papers requesting the order that were on file at the time the order was made?—A. They are usually inclosed in the jackets—those that antedate the order.

Q. You have been searching among these papers now for nearly a year, or quite a year, have you not?—A. For some time; yes, sir.

Q. A year or more?—A. Yes, sir.

Q. Do you not know that there are a great many papers that have come into your possession that have no indorsement upon them whatever by the office, simply because they are inclosed in another paper on which the indorsement is made?—A. I do not know as I understand your meaning.

Q. Here, for instance, would be a petition for expedition of service and folded up inside of that there might be a dozen other papers or letters, all to the same effect as that petition, asking for the same thing that the petition asks for, and yet there would not be an office indorsement upon a single one of those papers, excepting the outside one, in which the others were inclosed.—A. I think that every paper there has a brief on it.

Mr. WILSON. My dear sir, you do not listen to my question.

The WITNESS. Put your question so that I can understand it.

Q. I will see if I can make myself understood. Do you not know that there would be petitions and letters asking for increase and expedition of service inclosed or folded up inside of another petition?

The WITNESS. In a jacket, do you mean?

Q. No, sir; I am not talking about a jacket. I am talking about a petition—and that the only indorsement would be on the outside of that petition, which was wrapped around the other petitions and letters?—A. Well, it might be so, perhaps, in some cases; but I think all these petitions are briefed in the office by the clerk who has charge of them. They are generally described or referred to on that jacket.

Mr. WILSON. I am not talking about the jacket, Mr. Woodworth.

The WITNESS. If you will describe something that I have seen, I know about I will try and answer you.

The COURT. I understand you to speak of the condition of the papers when they are sent to the office and before they are jacketed and before that it?

Mr. WILSON. No, sir; I will explain it.

The WITNESS. It does not describe anything that I know that is intelligible to me.

Q. Now, here is a petition, we will say, asking for an increase of service, and here is another one. Both these papers are put into the office, and the corresponding clerk or whoever has charge of them takes that petition and puts it inside the other and writes on the back of one, and there is nothing at all to be seen. I am not familiar with those sort of papers.

in the Kearney to Kent route two or three that were not indorsed by the clerk, Mr. Brewer; but my recollection of Mr. Turner's work is that he briefed every petition. It may be there was one occasionally that was not briefed, but I think only occasionally one. I have perhaps discovered two or three petitions among these papers that had not been briefed by Mr. Turner, but I do not think more than that.

Q. Do you not know that letters come in there from Senators and members of Congress and others asking for the same thing that is asked for in the petition, and those are folded right inside of the petition, and all the indorsements that are made in the office are made on the back of that petition?—A. No, sir; I do not know that. I do not know how he might have folded these things originally, but every paper asking for an increase of service that was in the files when I received them is there now, and I think you will find everything of that kind preceding the—there may be some papers not referred to in jackets at all, that are not in the jackets, but we have aimed to keep all the papers in the jackets in which they were originally.

Q. But you say there might be papers that referred to the subject that were not in the jackets?—A. There might be; yes, sir.

Q. Do you know where those are?—A. They are all there.

Q. You think they are all there?—A. Every one; yes, sir.

Q. Did you get these papers yourself from Mr. Brewer?—A. From Mr. Turner—

Q. [Interposing.] I should say Mr. Sweeny.—A. I generally sent a clerk up to get them.

Q. You did not go yourself?—A. Sometimes I would, and sometimes I would not.

Q. Do you testify to the jury that every paper that you got from Mr. Sweeney in relation to this particular route is here?—A. It is, to the best of my knowledge and belief. If any one that ever belonged in these files is away from them I don't know it.

Q. How many persons have had access to them?—A. Not many. I have generally kept them very carefully.

Q. Name those who have had access to them?—A. Well, we have some clerks in the room. Major Reeves has been there, and Mr. Sloan has been there. I don't know if he has ever touched one of these papers. Mr. Blackman has been there, and Mr. Findley was there at one time. He is up-stairs now.

Q. Have any detectives been around there handling these papers?—A. I think not; no, sir. There perhaps have been some of the inspectors that have seen some of them.

Q. Have there not been some detectives around there?—A. Not that I know of.

Q. Have you not had a detective in the office?—A. I don't know as we have; we have had post-office inspectors to examine them more or less.

Q. Who are they?—A. I think Mr. Seibold has looked through some of the Colorado routes.

Q. Who else?—A. Perhaps Mr. Stewart. I don't think Mr. Seibold did look over any of the Colorado routes. Perhaps Mr. Stewart may have looked over some of them. He has been here since this investigation began.

Q. Who else?—A. Mr. Boyd, who is another inspector, has looked over the papers in another route, but I don't know as he has any of them. There have been very few inspectors who have looked over these papers.

Q. Who else?—A. I do not know that any of them have.

Q. You do not know of anybody else?—A. If you will give me something to indicate what you are driving at, may be I could answer.

Q. I am simply driving at finding out who has had the handling of these papers since they came into your custody. That is all.—A. Very few have handled them.

Q. I do not know how many you mean by very few.—A. I have mentioned the clerks we have had there.

Q. Was there anybody else there?—A. During the early part of the investigation Mr. Gibson was employed by the Department of Justice. Whether he ever touched any of these papers or not I could not say. I don't think he had anything to do with the papers embraced in this indictment.

Q. Can you think of anybody else?—A. If you will indicate to me what you want I will answer.

Q. It is not my purpose to indicate. It is my purpose to ask questions, and it is for you to indicate.—A. Mr. Bliss has handled them, and Mr. Merrick, to a certain extent.

Mr. MERRICK. Did Mr. Cook have them?

The WITNESS. I do not think he ever had one of them. No, sir; not any of these papers.

Q. [Continuing.] You cannot think of anybody else; did you sit by and watch these papers all the time these gentlemen were handling them?—A. I have not watched Colonel Bliss or Mr. Merrick, but I have been pretty careful with these papers—very careful.

Q. You are prepared to swear now, after all these papers have been handled in this way, that you have every paper here that came into your possession?—A. I will swear that up to this time—I don't know what happened to-day, but till yesterday I never missed one.

Q. Never missed one?—A. No.

Q. How many papers have you been handling in this last year?—A. I have handled a great many.

Q. About a million?—A. Not as many as that.

Q. Bushels of them?—A. I have handled a good many.

Q. Do you pretend to swear that you could recollect every paper that was in each one of these routes?—A. No.

Q. Then how are you prepared to swear that you have not missed one?—A. I swear that I have taken excellent care of them.

Q. You mean to swear that you have done the best you could, but you do not know whether the papers are all here or not?—A. As the papers leave my hand, I do not think you will find any of them missing. But when they get in here I cannot pretend to follow them any longer. They are scattered along; but up to the time they leave my hands to come into this court you will find none missing.

Q. Did you take an inventory when they came to you from Mr. Sweeney?—A. No, sir; I did not.

Q. Did you give a receipt?—A. I think the messenger there gave a receipt, or he charged them to me.

Q. You did not get them from Mr. Sweeney at all?—A. Sometimes I asked for them and sometimes sent for them and he charged these papers to me.

Q. You sent somebody and that somebody whoever it was gave a receipt, or they were charged to you?—A. I sent for the papers and got them.

Q. Then you sent for them and got them and did not get them yourself?—A. I did sometimes.

Q. Can you tell whether you got *these* papers?—A. I could not say. I was after the papers and he made whatever record he pleased.

Q. Where were you on the 7th of September last?—A. I could not recollect.

Q. Do you know how many papers you got on this particular route?—A. No, sir. I had these outside jackets put on and they had this number, and they described the contents, and my object was partly to protect the papers from being lost. If one of those papers were missing I should have been put on notice right away that one of the papers was out of the way.

Q. Taking into consideration all the papers you handled, suppose there were a half a dozen papers that had not a single file mark upon them that came into your possession, would you know that these papers were all here to-day?—A. Generally, as I say, they are briefed when they come to me. There might have been a few exceptions. They were generally briefed, and they had jackets put on for greater security, and if one of those jackets is absent I am put on notice that one of the papers is missing.

Q. Who jacketed them?—A. Most of the jacketing is done by Major Reeves.

Q. Who is he?—A. A clerk in the Post-Office Department.

Q. And he handled the papers?—A. Yes, sir.

Q. He is another one.

Mr. MERRICK. He stated him.

Q. [Continuing.] When you got the papers, you sent up for a lot of them at a time?—A. Sometimes for one route, and sometimes for several.

Q. They would come down to you a whole lot at a time?—A. Yes, sir.

Q. When you got these packages in there, did you count these papers over?—A. No, sir.

Q. Did you open the package to see how many there were in it?—A. No, sir.

Q. Then you could not tell whether there were ten or twenty in them?—A. That is something I could not tell.

Q. All that you can say is that these packages came to you, and they have been handled in the way that you have been describing, and it is the best of your belief that you have done the best you could to preserve the papers?—A. We have another evidence of it. You take all the jackets here and an entry of them is made upon the records—

Q. [Interposing.] But these are the jackets that you made?—A. No, sir. It would be almost impossible for any important paper to be lost without our knowing it right away, and for this reason, that every jacket of the Post-Office Department—I do not think I am mistaken about that—is entered upon a book kept by the clerks in the contract office. They are entered also chronologically. They are the jackets making orders; jackets changing schedules; and if one of those jackets was missing, of course, the record book upstairs would show it, and then these jackets refer to inclosures, and if those inclosures were missing, that would put us upon notice.

Q. Exactly. That is the very trouble that we have, to know what were the inclosures.

Mr. BLISS. The jacket describes them.

Mr. WILSON. But it don't always describe them.

Mr. BLISS. It does in this case.

Mr. WILSON. Well, you will see.

Mr. BLISS. I do not want to stop this, so far as it is addressed to the examination of Mr. Woodward, as to whether some paper which came to him may not be missing. All I am seeking to prove is, that certain papers came to him from Mr. Sweeney that are here. I propose, then, to ask Mr. Sweeney in whose handwriting are the entries, and then to offer these in evidence. There may be some other papers missing, which they can then go into.

The COURT. You can go on. The object is, I suppose, to throw doubt upon the effect of papers that are here; that there may be other papers lost which would explain them, or something of that sort.

Mr. WILSON. My purpose is to ascertain whether or not we are sure that we have the files of the Post-Office Department as to this particular route before these gentlemen commence putting these papers in evidence. We want them all.

The COURT. You can pursue your cross-examination, but the papers of course will be admitted, unless it is shown that some important paper has been stolen, and I do not know that the loss of a paper will exclude those that are here.

Mr. WILSON. I am not saying it would. I have not asserted that; but I simply want to ascertain whether we are going to get the files of the department in their integrity.

Q. [Resuming.] What was that book you said they kept in the Second Assistant's office?—A. They kept the book there from which the orders made in these various jackets are entered.

Q. Yes; but do you say they keep a book there which shows the papers that are filed?—A. No, sir; I did not say anything of that sort. I said that they had a book which would identify the jackets, and the indorsement on the jackets would identify the inclosures in those jackets.

Q. How will the indorsement on the jacket identify the inclosures, if the inclosures are not filed or in any way particularly mentioned by the entry on the jacket?—A. They would not; but they are supposed to be mentioned there. Of course, if they are not, they would not be identified.

Mr. MERRICK. It has been proved to be the duty of that clerk.

The COURT. Oh, yes; there must be a great many papers in the business of the office that are not jacketed, and those may be lost. Papers that are not jacketed and not recorded and no entry made of them, of course may be lost in any office.

Q. [Resuming.] But, Mr. Woodward, suppose now the entry upon one of these jackets is "petitions inclosed, requesting expedition of service." There might be five petitions in that jacket, and three of them might be lost and still there would be petitions inclosed?—A. I do not think any have been lost since I have had them.

Q. But that could occur, couldn't it?—A. I don't think any have been lost.

Q. That is not my question, Mr. Woodward. That could occur, could it not?—A. It is a possibility that papers could be lost, but when one takes such care of them as I have tried to take, I do not think any of them have been lost.

Q. But then, if you have a jacket, with the language on it I have stated, "petitions inclosed," and there were two petitions in the jacket to-day, it would be in accordance with the entry on the jacket?—A. Yes, sir.

. Now, there might have been a half dozen more petitions?—A.

There might have been. The petitions there would not have been identified by the jackets.

The COURT. Is there such a case as that? Let us be practical. Now, have you any such thing as that here?

Mr. WILSON. I am not prepared to say at this moment, your honor. If it was so I would not want to disclose it at this moment.

The COURT. We are examining as to facts.

Mr. WILSON. I am examining as to the integrity of these papers, with a view to ascertaining just the manner in which they have been kept. That is all I have to ask of this witness.

GEORGE M. SWEENEY resumed the stand.

By Mr. BLISS:

Question. [Submitting papers to the witness.] Look at these papers and tell us if you know in whose handwriting the indorsements thereon are.

The COURT. Do you propose to examine Mr. Sweeney at much length?

Mr. BLISS. No, sir; merely to ask him to identify handwriting. I think that is all in connection with this route.

A. [After examining papers.] These are in the handwriting of William H. Turner, except the signature. [Submitting papers.] And these are in the handwriting of Byron Coon. [Submitting other papers.] This is in my handwriting. [Submitting another paper.]

Q. This one which is dated July 23, 1881, is in your handwriting?—

A. Yes, sir; except the signature.

Q. The one dated April 3, 1879, and the other dated July 23, 1878, are in whose handwriting do you say?—A. The handwriting of Byron C. Coon. This lower portion here [indicating] is not in the handwriting of the clerk making the order; neither is the "R" in red ink there. The number of the order and the date is in somebody else's handwriting.

Q. You do not know in whose handwriting this is?—A. No, sir.

Q. [Submitting other papers.] Look at those two. I think those two were not handed to you.—A. Those are indorsed in the handwriting of Byron C. Coon.

Q. Who is Byron C. Coon?—A. A clerk in the office of the Second Assistant Postmaster-General.

Q. How long has he been such?—A. I do not know. He has been there, I think, since 1875, and probably before that.

Q. There are eleven, then, I think, which you identify as in Mr. Turner's handwriting?—A. No, sir; this one [indicating] is in Byron Coon's handwriting.

Q. [Submitting other papers.] Then, there are ten, counting the papers with the jacket included in one?—A. Yes, sir.

Q. Tell us how many in Coon's, and how many in the others?—A. Five in Mr. Coon's and one in mine.

Q. The one that is in your handwriting is the one dated July 23, 1881, is it?—A. Yes, sir.

Mr. BLISS. Perhaps it may be better to prove the indorsements upon the papers inside of the jackets, as they may be separately indorsed.

Q. [Continuing, and submitting papers to witness.] Please look at those papers which I took from this jacket, headed June 20 or 26, I am not sure which, 1879?

The WITNESS. You want to know by whom these are indorsed?

Mr. BLISS. Yes.

A. By Byron C. Coon. That calculation there [indicating] is in Mr. Turner's handwriting.

Q. The blue pencil writing upon the jacket is in whose handwriting?
—A. General Brady's.

Q. The name on the back is whose?—A. That is his signature.

Q. Mr. Brady's?—A. Yes, sir.

Q. And the "Do this, Brady," on the front is in his handwriting?
A. Yes, sir.

Mr. WILSON. If you want to make a sure thing of it I will admit it.

Q. [Continuing and submitting a paper to witness.] Please look at the back of this paper headed August 30, 1878, and state in whose handwriting the signature there is?—A. It is the handwriting of Mr. French, at that time chief clerk of the Second Assistant Postmaster-General's office.

Mr. TOTTEN. [To Mr. Bliss.] How will we know to-morrow morning just what papers you have identified?

Q. [Continuing and submitting a paper to witness.] I hand you this paper, headed July 23, 1880. In whose handwriting is the signature there?—A. General Brady's.

Q. [Submitting another paper to witness.] I hand you this paper, headed July 31, 1879. In whose handwriting is that signature?—A. It is the signature of John L. French.

Q. The same Mr. French whom you spoke of before?—A. Yes, sir.

Q. [Submitting another paper to witness.] I hand you this paper, dated October 1, 1878. In whose handwriting is the signature there?
—A. General Brady's.

Q. [Submitting another paper to the witness.] I hand you this paper, headed December 2, 1878. In whose handwriting is the signature?
A. General Brady's.

Q. [Submitting another paper to the witness.] I hand you this paper, dated December 7, 1880. In whose handwriting is the signature to that?
—A. General Brady's.

Q. [Submitting another paper to the witness.] I hand you this paper, headed November 11, 1879. In whose handwriting is the signature there?—A. John L. French.

Q. The same French to whom you referred before?—A. Yes, sir.

Q. [Submitting another paper to the witness.] Here is a paper headed December 14, 1880. In whose handwriting is the signature on the reverse?—A. General Brady's.

Q. [Submitting another paper to witness.] Here is a paper headed November 10, 1880. In whose handwriting is the signature on the reverse?—A. General Brady's.

Mr. BLISS. I believe that is all I desire to prove.

By Mr. WILSON:

Q. How long have you been in that office?—A. Since April, 1875.

Q. What has been the practice in the office ever since you have known it with reference to changing the address of contractors?—A. We have changed it whenever it was requested by the contractor.

Q. Whenever they request an address to be changed it is done?—A. Yes, sir.

Q. Is there anything unusual in this case about a matter of that sort?—A. Nothing that I know of.

Q. In other words what is done in this case is what is done with reference to all the contractors of the department?—A. Whenever they request it.

Q. What is your present position in the department?—A. I am corresponding clerk in charge of a section.

Q. How long have you been such?—A. I believe since 1877 or 1878.

Q. Do you make an indorsement on every paper that comes in?—A. It is customary to make it upon every paper, but it is not a uniform custom. Sometimes it is not done where there is more than one paper pertaining to the same subject. It is generally our habit to indorse everything, but where there are a number of papers, each similar and all relating to the same matter, it does sometimes happen that only one or a part of them are indorsed, and they are wrapped around the others. I do not know that that is anything unusual.

Q. I do not say that it is, but I simply want to know what the practice of the department is. So that a paper might disappear, and there remain nothing to indicate that it had disappeared or that it had ever been there?—A. Some papers might.

Mr. WILSON. That is all.

At this point (3 o'clock and 40 minutes p. m.) the court adjourned until to-morrow morning at 10 o'clock.

THURSDAY, JUNE 15, 1882.

The court met at 10 o'clock a. m.

Present, counsel for the Government and for the defendants.

J. F. H. BLOIS sworn and examined.

By Mr. MERRICK:

Question. What is your occupation?—Answer. I am called a book-keeper of the finance division of the Post-Office Department.

Q. [Calling attention to papers.] State whether or not you recognize those papers as any that you have heretofore seen and know.—A. Yes, sir.

Q. Are they papers in your custody?—A. They are not in my custody; they are in the custody of our division.

Q. You have brought them from the place of their deposit here this morning?—A. I did, sir.

Mr. MERRICK. They are the receipts given by the parties for the warrants on route No. 34149. [Submitting the same to counsel for defense.] They are the papers to which I referred yesterday as being the only remaining record evidence necessary to complete that route.

The COURT. That is with regard to the first route, 34149.

Mr. MERRICK. Yes, sir; I stated to your honor that I had completed that route with that exception.

Mr. WILSON. These are the receipts for the warrants you introduced yesterday?

Mr. MERRICK. Yes, sir. He has here with him the receipts on the other routes in the indictment, which will also have to be offered, and might probably just as well be identified now as in their proper place.

Q. What are the papers you now hold in your hand?—A. These are receipts on routes 35015, 35051, 38113, 38134, 38135, 38140, 38145, 38150, 38156, 40113, 41119, 44140, 44155, 44160, 46132, 46247.

Q. Those papers are in the custody of your department?—A. Of our division.

Q. And brought here by you this morning as a member of that division?—A. Yes, sir.

Mr. HENKLE. Do you propose to put them all in, or only one route now?

Mr. MERRICK. Only one at present. I simply want to have them identified.

The COURT. So that the witness need not come back.

Mr. MERRICK. Yes; they can be marked as identified in any way at all.

By Mr. HENKLE:

Q. I see some of these receipts are signed by John R. Miner, attorney for contractor, for Vaile, and some of them are signed by Miner for self and Vaile. I want to ask you whether there is on file, in your office, a power of attorney from Vaile to Miner?—A. Not that I know of, sir.

Q. How did you come to get these receipts?—A. Because Mr. Miner always called for Mr. Vaile's warrants, and we always handed them to him, and he signed the receipts for the same.

Mr. HENKLE. Won't you be kind enough to see whether there is a power of attorney on file?

Mr. MERRICK. Look and see if there is a power of attorney on file. [To Mr. Henkle.] Do you want it here to-morrow morning?

Mr. HENKLE. I would like to have it.

Mr. MERRICK. [To the witness.] If there is, bring it in, and if not, send word that you found none.

Mr. WILSON. It had better be brought in to-day.

Mr. HENKLE. As a matter of fact, I understand there was a power of attorney filed in the department.

Mr. MERRICK. [To the witness.] If there is, you can find it.

The WITNESS. Yes, sir.

Mr. MERRICK. Look, and let us know.

The WITNESS. All right.

By Mr. WILSON:

Q. You would not deliver drafts to a party without having some authority, would you?—A. Provided we know the party.

Q. Do you mean to say that if you knew a man and he went in there and asked for one of Mr. Vaile's warrants you would give it to him?—A. If he came there and asked for the warrant we would suppose he had some right to get it.

The COURT. The warrant was not payable to him. It was payable to Vaile.

Mr. WILSON. Of course; but it would be a very remarkable thing to give out warrants to parties who had no authority to receive them, except their say so.

Mr. MERRICK. The real voucher for that office is the warrant itself, which comes back after payment, indorsed, and goes into that office.

Mr. WILSON. [To the witness.] See if you have got any written authority, letter, power of attorney, or what not.

The WITNESS. All right.

Mr. MERRICK. On any of these routes.

Mr. BLISS. I suppose it will not be necessary to state more than the operative portion of more than one of these papers.

Mr. TOTTEN. What are they?

Mr. BLISS. The papers just offered.

Mr. WILSON. You need not read them.

Mr. BLISS. I will read one to the jury and state the dates of the others and the operative parts of them.

POST-OFFICE DEPARTMENT,
OFFICE OF THE THIRD ASSISTANT POSTMASTER-GENERAL,
FINANCE DIVISION,
WASHINGTON, D. C., November 6th, 1878.

SIR: Herewith find warrant No. 11535 in your favor, which please present for payment immediately, thereby very materially facilitating the business of the department. Date and sign the annexed receipt, and return the circular entire by first mail to this office.

Respectfully,

A. D. HAZEN,
Third Assistant Postmaster-General.

Received the above-mentioned warrant November 6th, 1878, 11535.

JOHN M. PECK,
Contractor, M.

There is also a similar one dated January 22, 1879, for warrants 1402 to 1407, receipted for on the same day, H. M. Vaile, contractor, by John R. Miner, attorney.

A similar one, dated April 15, 1879, for warrant 2716, receipted for on the same day, by Lewis Johnson & Co., attorneys for contractor.

A similar one dated July 16, 1879, for warrant 5906, '7, '8, receipted on July 17, 1879, by W. N. Roach, cashier, assignee of the contractor.

A similar one dated July 22, 1880, for warrants 6942, '3, receipted for July 24, 1880, by Thomas C. Pearsall, cashier, for contractor.

A similar one, dated October 16, 1880, for warrant 10881, receipted for October 18, 1880, by Thomas C. Pearsall, cashier, for contractor.

A similar one, dated January 18, 1881, for warrants 348 to 350, receipted for January 19, 1881, by John R. Miner, contractor, for H. M. Vaile, his attorney.

A similar one, dated May 3, 1881, for warrants 5943 to 5945, receipted for May 4, 1881, by John R. Miner, contractor, for self and H. M. Vaile.

A similar one, dated August 9, 1881, for warrants No. 2071, 2072, receipted for August 15, 1880, by receipt of John R. Miner, attorney for self and H. M. Vaile.

A similar one, dated October 28, 1881, for warrants 4855 to 4864, receipted for on the same day by John R. Miner, contractor, attorney for self and H. M. Vaile.

A similar one, dated January 19, 1882, for warrant 344, receipted for the same day, by John R. Miner, attorney, contractor.

WALTER L. NICHOLSON, sworn and examined.

By Mr. BLISS:

Question. What is your business?—Answer. I am topographer of the Post-Office Department.

Q. How long have you been such topographer?—A. Since the 1st of May, 1863.

Q. As topographer, what are your general duties?—A. To keep up the geographical information of the Post-Office Department for the use of its officers and clerks.

Q. Do you prepare the maps?—A. Yes, sir.

Q. From what information do you prepare them?—A. From all the best accessible information—land-office surveys, surveys by the Engineer Department of the United States, local surveys, and the best information I can get as regards the general features of the country; as to the position of the post-offices we get definite data.

Q. From whom do you get your definite data?—A. From the ap-

pointment office of the Post-Office Department, along with the original case establishing the office.

Q. Then you prepare postal maps for the department, do you not ?
—A. Yes, sir.

Q. And they are the maps used by the department ?—A. Yes, sir.

Q. [Submitting maps to the witness.] Please look at those maps and see if you know what they are.—A. Yes, sir; I know what they are.

Q. Were they prepared in your office ?—A. Yes, sir. I only prepared nine. I count eleven here. They may be duplicates.

Q. What are these maps ?—A. They are diagrams prepared by one of the draftsmen in my office under my direction.

Q. Of what ?—A. Showing the position of the post-offices and the service at a certain time on route 38135.

Q. From what information were they prepared ?—A. These were done by one of the draftsmen in my office to whom I assigned that work from data furnished by Mr. Woodward.

Q. What data ?—A. The records of the department pertaining to that route.

Q. And from the other information that you spoke of in the general postal maps ?—A. Yes, sir.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. Will you state to the jury distinctly upon what information you prepared this diagram ?—A. The diagram, sir, was prepared by one of the draftsmen in my office. I did not prepare it myself.

Q. You do not know anything about it, do you ?—A. I know it was prepared in my office.

Q. That is all you know about it ?—A. It was prepared under my direction by one of the draftsmen in my office.

Q. Do you know who directed him to run these lines ?—A. No, sir.

Q. You simply directed him to prepare it ?—A. Yes, sir.

Q. That is all you did ?—A. Yes, sir.

Q. As to the accuracy of it, therefore, you have no personal knowledge whatever ?—A. No, sir.

Q. [Submitting map of 34149.] Now, I will show you another map—That was prepared in your office, was it not ?—A. Yes, sir.

Q. Who gave you directions about preparing that ?—A. No one gave me directions. The directions were given by Mr. Woodward to my draftsman.

Q. You have looked at that map since, have you not, and know that it is not right ?—A. As I understand it this map exhibits the service at a certain time of the term during which it was performed.

Q. It exhibits the manner in which it was performed, but not the route, does it not ?—A. So I understand.

Q. So that it is not a correct diagram of that mail route, is it ?—A. I am not prepared to say that, sir.

Q. Are you prepared to say that it is ?—A. No, sir. The records of the department will show that.

Q. The route of which this professes to be a diagram is No. 34149. That route goes from Kearney by Prairie Centre, South Loup, Centennial, Sweetwater, Cedarville, Loup City, Arcadia, Douglas Grove, and Longwood to Kent ?—A. Yes, sir.

Q. Does that diagram represent that ?—A. Yes, sir; at least it represents it by certain lines.

Q. Does it represent all the lines there? You will observe there is simply a pencil mark drawn on there since the diagram was made.—

A. No, sir; the connection between Cedarville and Sweetwater is not there.

Q. So that it is not a correct map?—A. Not according to the way it was advertised and let. I wish to make a remark.

Mr. WILSON. Certainly.

The WITNESS. I wish to say that my office is only an office of record. I do not know. I take the statements as to the routes and distances from the Second Assistant Postmaster-General. I cannot tell how the service is performed.

Q. Have you any record in your office showing any such route as is laid down on that diagram?—A. If my attention was ever directed to it I do not now recollect whether the diagram used by my draftsman or clerk showed the connection at Cedarville or not. I can't recollect.

Q. But that is not a proper diagram of the route as advertised and let?—A. As you have read it to me it is not.

Q. I have read it correctly as it is here in the advertisement. It is not correct, is it?—A. No, sir; not according to that.

Q. Now, then, will you tell the jury who directed that change to be made and that diagram to be made in that way?—A. I only know this: that my draftsman received the information to put the lines in in the office of Mr. Woodward, or from some one by his direction. I believe it was the subcontractor.

Q. Who was that subcontractor?—A. Mr. French.

Q. He is the gentleman who has been here testifying in this case, is he not?—A. I think I have heard of him testifying.

Q. You have seen him here?—A. Yes, sir.

Q. Do you recollect his full name—C. H. French?—A. C. H. French.

Q. And Mr. C. H. French gave to your assistant, in Mr. Woodward's office, the directions by which he made that map?—A. He gave him certain directions and information, but what particular information I don't know.

Q. Now, as to this map that you have been showing to the jury or that Mr. Bliss has been inquiring about of you, you do not know whether that is correct or not?—A. No, sir.

Mr. WILSON. I will ask you now to make a diagram of the route from Kearney to Kent as it appears by the records.

Mr. HENKLE. As it existed August 1, 1879, when it was expedited?

Mr. WILSON. August 1, 1879.

Mr. MERRICK. You must make it from the advertisement.

The WITNESS. I can go to the books of the department.

Mr. BLISS. It was changed after the advertisement.

Mr. HENKLE. When it was expedited is the time we are speaking of.

Mr. WILSON. August 1, 1879—a diagram of that date.

The WITNESS. After it was expedited?

Mr. WILSON. The day it was expedited.

Mr. BLISS. You want what?

Mr. WILSON. I want a diagram of the route.

Mr. BLISS. As it ran, or of the route—

Mr. WILSON. [Interposing.] I am not talking about the road that the contractor traveled. I am talking about the route that was advertised for and contracted for.

Mr. HENKLE. As the Government required it to be on August 1, 1879, when it was expedited.

The WITNESS. That is as it appears on the books of the department.

Mr. BLISS. The Kearney and Kent route map is a map of the as traveled by the contractor.

Mr. WILSON. That is exactly what we are complaining about they bring here a map showing the road that the carrier traveled instead of the route which was contracted for.

Mr. BLISS. Inasmuch as we brought it in avowedly as such, I see that there is any cause of complaint.

Mr. WILSON. You did not bring it in avowedly as such. If you brought it avowedly as such the court would not have allowed testimony.

The COURT. It was proclaimed here at the beginning that Cedar was supplied by a cross-route from Loup City.

Mr. MERRICK. Certainly it was.

The COURT. It was not pretended that the mail was carried Kearney, through Cedarville, and on to Loup City. I did not stand them as claiming any such actually traveled route as that.

Mr. WILSON. They exhibit this as a diagram of that route.

Mr. BLISS. As traveled.

Mr. WILSON. Oh, no.

Mr. BLISS. I said so expressly.

The COURT. That is what I understood, and certainly the evidence shows it was a diagram of the route as the service was performed and not as called for in the contract.

Mr. BLISS. Bear in mind that this is your service under the contract, and we are showing how under the contract the service was formed.

Mr. HENKLE. The complaint is, your honor, that we have a false affidavit as to the number of men and animals required to run the route as expedited. Now, our affidavit was, of course, predicated on the route as the Post-Office Department required it to be run and the subcontractor chooses to ignore the requirements of the Post-Office Department and run the route to suit himself. Now, I say that we cannot charge us with having——

The COURT. [Interposing.] That is for effect with the jury.

Mr. HENKLE. Your honor, I am directing it to the court with reference to the point now before the court. We want a diagram made by the authority of the Post-Office Department, or by this gentleman who represents the Post-Office Department in that branch of it, to present to the jury, so as to show them the requirements of the department when this route was expedited and with reference to which the affidavit was made. We have a right to that, it seems to me.

Mr. BLISS. Is it true that it was made with reference to a false affidavit?

Mr. HENKLE. It is true that the affidavit was made according to the route prescribed by the department.

Mr. BLISS. Look at your affidavit and you will see how it reads.

Mr. MERRICK. The point is this: If the counsel admits that the affidavit is false as to the route that was traveled under the contract made with the department, it is all I want.

Mr. HENKLE. We make no admissions at all, your honor.

Mr. MERRICK. The contractor who made the affidavit was the contractor of the entire transaction. It was under him that this route was run.

The COURT. Is it conceded that the map on this first route from Kearney to Kent, exhibits the route as it was actually traveled?

Mr. HENKLE. I do not know but that it does, your honor.

The COURT. It was with that view only that it was admitted.

Mr. HENKLE. No, sir; I beg your honor's pardon.

Mr. BLISS. That was the view we had.

Mr. HENKLE. There has not been one scintilla of evidence tending to show that my client ever authorized this subcontractor, who appears to be hostile to them, to depart from the route as prescribed by the department.

Mr. MERRICK. I want to correct——

Mr. HENKLE. Excuse me, Mr. Merrick.

The COURT. Let me hear General Henkle.

Mr. HENKLE. I say, your honor, that the affidavit which is claimed in this indictment to be false, having been made by my client was predicated of the route as it was prescribed by the department, and not as it was run in violation and in contempt of the department by this subcontractor.

The COURT. I know what you contend for, but here——

Mr. HENKLE. [Interposing.] Allow me just one moment.

The COURT. This is not offered for any such purpose, as I understand. It is offered for the purpose of showing the route that was traveled before the order of expedition was made.

Mr. HENKLE. No, your honor. It is offered, if the court will excuse me, for the purpose of showing that my client committed a perjury, and that is predicated of the affidavit in the indictment in support of it, as to the number of men and animals necessary to carry the mail upon that route.

The COURT. You are talking now of the effect of the evidence. The question is as to the admissibility of the evidence.

Mr. HENKLE. I am talking of the admissibility of the evidence, your honor. I say that the affidavit was made with reference to the route as it was prescribed to be run by the department.

The COURT. That is your argument.

Mr. HENKLE. Now, I say we have a right to have the department furnish us with a correct diagram of the route as they required it to be run. This gentleman has testified that this diagram was made upon information furnished by this subcontractor.

The COURT. Yes.

Mr. HENKLE. He has told your honor, also, that these maps are made upon information that ought to be accurate, furnished by postmasters along the route. Now, the testimony of this witness shows that the subcontractor brought here from Nebraska to testify against my client is permitted to go into the Post-Office Department and himself dictate the map which is introduced here in evidence.

The COURT. He could have made the map himself.

Mr. HENKLE. It seems he did. Undoubtedly he had a right to make a map: but the Government is misleading the jury. I say you are charging us with a high crime, and the crime consists in having made a false affidavit in reference to this route and as to the number of men and animals necessary to run it. Now, I say that that was predicated of the route as it was prescribed by the department, and we have a right to show this jury, under the authority of the department, what that route was with reference to which the affidavit was made.

The COURT. You have shown it. The Government's witnesses have proved it.

Mr. HENKLE. Yes, but we have not had the diagram.

Mr. BLISS. The Government admits it.

The COURT. Mr. French, the witness, has proved all that you claim.

Mr. HENKLE. We ask that a diagram be made and that the bring it to court.

The COURT. They will do it if they choose to. I suppose they do it.

Mr. MERRICK. Mr. Henkle states that there is not a particle of knowledge on the part of the man who made that a that that was part of the route run.

The COURT. I attempted to arrest the argument of General

Mr. MERRICK. The difficulty is this, your honor: That you arrest them; but my respect for the court always allows you to me, and by your arresting me a false impression is produced by them, disregarding your attempt to arrest them, state. Now, the evidence shows that Mr. Peck was informed that Cedarville was a by side supply; that Cedarville was not on the direct route, and Mr. Peck knew it and acquiesced in it, and his affidavit was as to the running of the route in the way it was done. But one word as a witness. The original advertisement took the road, if you choose from Sweetwater to Cedarville. Subsequent to that advertisement I was added as a post-office. It lies north of Cedarville, and if you run a line from Sweetwater to Cedarville you do not run the line by the road itself had to run, for he had to go to Fitzalon, and it being north of Sweetwater and between Loup City and Sweetwater went on from Fitzalon to Loup City and back to Cedarville. I should like to know whether there is in the department a specification that he should go from Fitzalon to Cedarville after Fitzalon was added.

Mr. WILSON. Now, I want to say a word, your honor.

The COURT. I have had enough of this, and I cannot have any more of Judge Wilson. I must arrest this argument, because it is a waste of time. The testimony was received, and properly received, and cannot go over that ground at all. The argument this morning on both the side of General Henkle and Mr. Merrick, was merely the effect of the evidence. The evidence was admitted without objection and it was clearly proper for admission. What it amounts to in the affidavit is another thing, and is subject for future consideration.

Mr. HENKLE. I am not objecting to the admission of that but we only want it supplemented with the other.

The COURT. In regard to the admissions of diagrams, any man can make his own diagram, and it depends upon the evidence before the jury whether it is a true diagram or not. Both sides produce their own diagrams, and the witness giving his testimony compares it before the eyes of the jury and exhibit it in illustration of the evidence given.

Mr. HENKLE. It has no more authority coming from the court if we make a diagram and present it to the jury.

The COURT. If they produce an incorrect diagram wherein it is incorrect, and you may ask them if they want a correct diagram.

Mr. HENKLE. That is just what I am asking, your honor.

The COURT. And if they choose to comply with you they can do it, but they are not obliged to do it.

Mr. MERRICK. I ask the witness on behalf of the Government to make a diagram, and run his line according to the line shown in the advertisement after Fitzalon was added as a post-office.

Mr. HENKLE. That is ingenuous and fair.

Mr. MERRICK. I always want it to be so.

The COURT. I do not think there is a particle of ground for doubt as to the whole testimony in regard to that route—not a particle. The diagram does not show directly the route as called for in the contract or by the advertisement, but it does illustrate precisely the evidence that was given by Mr. French, as to the side supply.

Mr. MERRICK. That is all we offer it for. [To the witness.] Do it to-day, can you?

The WITNESS. Yes, sir.

Mr. MERRICK. Have you one of these maps [indicating]?

The WITNESS. Oh, yes, sir.

Mr. MERRICK. That is all, sir.

Mr. BLISS. I offer in evidence one of the papers identified yesterday, being a letter from the postmaster at Pueblo, dated December 15, 1877.

Mr. HENKLE. If the court please, it is a matter of some little delicacy. The Government has prepared quite a number of diagrams, of the routes as to which they propose to introduce testimony now, and I think it is but fair that counsel representing the parties charged with crime should have an opportunity to examine these routes. We have no diagrams of them. The gentlemen, as a matter of courtesy, chooses not to let us have them. They are made at the expense of the Government and are the property of the Government, and I submit to the court whether independently of the question of courtesy—for that seems to be ignored most extraordinarily, it seems to me. I never have known that kind of practice to prevail in this court. It may be proper in some places, and usual; but it is not the practice of this court. We are all presumed to be gentlemen here, and I never have known such practice here. I ask the court now to allow us to have the inspection of these diagrams prepared by the Government, at the expense of the Government, and being the property of the Government.

The COURT. I do not see what power the court has in the matter.

Mr. BLISS. Allow me to state one single fact simply. The Postmaster-General gave these gentlemen an order some time ago to have the topographer prepare for them these maps—not these maps—but other maps of these routes, and at some inconvenience to ourselves we gave up papers that we were using in order to enable the topographer to comply with the request of the Postmaster-General, made on their behalf. I think in that respect, therefore, we have complied with all the rules of courtesy. When we are met with all these objections to sketches, I simply say that we shall hold them; that I do not think we shall put them in at all.

Mr. TOTTEN. I hope the gentlemen will not get angry at my merely objecting to an incorrect map being presented to the jury yesterday. It was conceded to be incorrect.

Mr. MERRICK. I do not concede that that map is not correct. I say it is correct.

Mr. TOTTEN. It is not correct.

Mr. MERRICK. After you add Fitzalon beyond Sweetwater there is no order to go beyond Fitzalon.

The COURT. We are past Fitzalon now. We are not talking about Fitzalon.

Mr. TOTTEN. I was talking about a matter of temper.

Mr. MERRICK. No, you were talking about an incorrect map, and not about temper.

The COURT. I do not know that the court has power to compel the Government to furnish its evidence to the other side, but when they

offer a diagram in evidence, of course the other side will have an opportunity to inspect it.

Mr. MERRICK. Certainly, it is our evidence.

The COURT. I have not seen the diagram yet.

Mr. HENKLE. There were several of them distributed to us on yesterday, and because Colonel Totten made some little criticism upon them they were withdrawn.

Mr. MERRICK. Not at all. They were distributed to the counsel as a matter of courtesy.

Mr. HENKLE. The gentlemen are acting like spoilt children.

Mr. MERRICK. It is a pretty condition of affairs for the gentleman to undertake to lecture us. When General Henkle undertakes to lecture Colonel Bliss and me it is time to have a new organization of things. May it please your honor, we presented these maps to them as a matter of courtesy, and by their acceptance they were not bound as to its competency at all. The map came in as evidence, and they admitted it, and subsequently the question of competency arose, they not drawing the distinction between their right to have the maps and the competency of the evidence and their right to show inaccuracies by the testimony, and therefore when they said we had to prove them, we said, "We will give them to you when we prove them."

The COURT. It very rarely happens that any diagram or any map is absolutely correct. If a witness is called and the diagram is submitted to him his testimony is given in respect to the diagram, and if he proves that diagram to be correct so far as his testimony goes, it is certainly competent testimony to go in evidence. If the diagram is incorrect in the view of the other side they may show by their own diagrams and by their own witnesses wherein it is incorrect; but when a diagram or a map is allowed to go to a jury, the court, by that act, does not say to the jury that the diagram is to be taken as absolutely true in all respects.

Mr. MERRICK. Certainly not.

The COURT. It merely exhibits the theory of the one side along with the evidence, and the accuracy and correctness of that diagram and that evidence may be impeached by the other side by their diagrams and their evidence.

Mr. BLISS. Have you any objection to that letter, gentlemen?

Mr. TOTTEN. We object to that letter?

Mr. BLISS. On what ground?

Mr. TOTTEN. We have not the honor of the acquaintance of William Ingersoll.

The COURT. What letter is it.

Mr. BLISS. It is a letter from the postmaster at Pueblo to the Second Assistant Postmaster-General at the contract office, dated December 15, 1877, notifying him that before the contract was let the advertisement was wrong, and the distance was wrong, and that, as he started from Saint Charles on his route, it would be impossible to get any mail there. Its pertinency comes in in this way: that based upon this and some other papers, Mr. Brady made an order extending the route from Saint Charles to Pueblo, and allowing twelve miles additional for the distance.

The COURT. [To counsel for the defense.] What is your objection?

Mr. TOTTEN. We want to cross-examine Mr. Ingersoll. If he knows anything about this route, we want to see what it is; we do not want to have an *ex parte* letter introduced here.

The COURT. This paper is part of the department record.

Mr. TOTTEN. I do not know whether it is or not. It has not been proved.

Mr. BLISS. It was proved yesterday, sir.

Mr. TOTTEN. It relates to the accuracy or the propriety of the place where a particular post-road shall begin. This man claims that it shall begin at his office, whilst the Post-Office Department advertise it to begin at another point. He gives his opinion about it. I submit to the court that his opinion is not a matter of importance to start with, and in the next place, if he knows anything about it, we want to cross-examine him.

The COURT. This is one of the papers identified yesterday, I understand?

Mr. BLISS. Yes, sir.

Mr. CHANDLER. It is not a communication which the law requires the postmaster to make to the Second Assistant or to any officer. It is perfectly voluntary on his part, like the communication of any private citizen. If it were an official document, one that the law called for, it would have a different status and character.

The COURT. Is it not an official letter?

Mr. CHANDLER. No, sir; it is a communication which he chose to write himself. He cannot constitute himself a witness against us, not being under oath, or make his private communications testimony against us. We have a right to cross-examine him. It is very questionable whether any communication he writes to the department can be brought in here and read against us as evidence. We have a right to have the witness face to face. Documents which are official in their character is one thing; but these communications which float into the department from the several offices of the Government cannot be used here as testimony against us.

Mr. MERRICK. Haven't we had all those questions settled already?

The COURT. Yes.

Mr. MERRICK. Then, what is the use of discussing them again?

Mr. CHANDLER. It is not signed by him officially either. It is signed by him as a private individual.

Mr. BLISS. It is signed "William Ingersoll." It is one of the papers upon which Mr. Brady made an order.

Mr. MERRICK. I suggest that we have no further debate as to the settlement of these questions.

Mr. TOTTEN. If that paper is admitted most any paper can be admitted in this case.

The COURT. Papers relating to this route which are brought from the department, and are proved to have come from the archives of the department, can go in evidence.

Mr. TOTTEN. Suppose some man wrote a letter charging everybody in Washington with a crime——

Mr. MERRICK. Has not your honor decided it?

The COURT. Yes.

Mr. MERRICK. Then is not that an end of the matter?

Mr. TOTTEN. I say, suppose some fellow should choose to write a letter to the Postmaster-General, charging somebody with adultery and everything else, would your honor admit it here?

The COURT. No; because adultery does not relate to the business of the Post-Office Department.

Mr. TOTTEN. Well, your honor, we object to that testimony.

The COURT. The objection is overruled.

Mr. TOTTEN. We want an objection noted on the record.

The COURT. Very well.

Mr. BLISS. I will now read the letter. It is headed, "Post-office, Pueblo, Colorado, December 15th 1877." In one corner "William Ingersoll, P. M.," and "Henry Avery, assistant P. M." It is stamped "Inspection P. O., December 19, 1877." "Second Assistant Postmaster-General, contract office, Washington, D. C."

DEAR SIR: I have received advertisement of November 1, 1877, and on examination I find, on page 23, route 38135, advertised from Saint Charles to Greenhorn, thirty-five miles, twice a week, and thirty-five miles is the distance from Pueblo to Greenhorn, and I cannot see how the mail will go to Saint Charles except from this office. Believing it to be a mistake, and thinking it my duty, I would respectfully call your attention to the matter.

Yours respectfully,

WILLIAM INGERSOLL.

[Letter just read was submitted to the clerk to be marked for identification, and was by him marked 4 B.]

Mr. BLISS. I now offer two other papers that were proved yesterday, to wit, a jacket and an inclosure. [Submitting same to counsel for defendant.] Do you object?

Mr. WILSON. No.

Mr. BLISS. [Submitting other papers to defendants.] I am going to offer that next.

Mr. WILSON. Read that jacket.

Mr. BLISS. [Reading:]

Date, August 30, 1878; State, Colorado; number of route, 38135; contract, Saint Charles to Greenhorn; length of route, thirty miles; number of trips per week, two; contractor, John R. Miner; pay, \$548 per annum.

Postmaster at Saint Charles reports that there is no station out on the Denver and Rio Grande Railroad at his office, and recommends that service on this route be changed so as to embrace and begin at Pueblo, increasing distance twelve miles. Extension will cost at pro rata \$328.80 per annum.

That is in red ink. Below that, in black:

Embrace and change service so as to begin at Pueblo, increasing the distance twelve miles, and allow the contractor \$328.80 per annum additional pay, being pro rata from September 10th, 1878. French.

Below that:

Order 7044, date August 30th, 1878. Day-book, page 15; wrote P. M. & contractor, August 30th, 1878.

The paper inclosed is as follows:

AUGUST 29, 1878.

Saint Charles, Colorado, route 38135. Postmaster reports that there is no station on D. & R. G. Railroad nearer than Pueblo, and recommends extension of service to that office.

That is the indorsement. The inside of the paper is as follows:

SAINT CHARLES POST-OFFICE,
Pueblo County, Colorado, August 15, 1878.

SECOND ASSISTANT POSTMASTER-GENERAL:

Washington, D. C.:

DEAR SIR: This is to inform you that it is impossible for me to act as postmaster here, and have the head of the route here. I have no time to attend to the business, and will not pay any more attention to it as being the head of route No. 38135. Pueblo is the place for the head of the route. Route 38135 should be extended from Saint Charles to Pueblo, and Pueblo made the head of the route, and service paid pro rata, and messenger service done away with. By having messenger service between Saint Charles and Pueblo the mails are delayed at Saint Charles post-office three days each

trip. By extending the route to Pueblo the mails will go through Pueblo to Greenhorn in one day.

You will please attend to this, as I shall not pay any more attention to the business as this being the head of the route.

Yours, &c.,

JAMES FAIRHURST,
Postmaster.

The next letter is as follows :

SAINT CHARLES POST-OFFICE, PUEBLO, COL.,
August 15, 1878.

SECOND ASSISTANT POSTMASTER-GENERAL,
Washington D. C.:

DEAR SIR: Mr. Jacob S. Taylor commenced messenger service between Saint Charles and Pueblo to supply route No. 38135 with mail August 15, 1878, at the rate of \$250 per annum.

Yours, &c.,

JAMES FAIRHURST,
Postmaster.

Please give me instruction in regard to settling for temporary service between this post-office and Pueblo from July 8, 1878, to August 12, 1878, being eleven trips at the rate of \$275 per annum, that being the best rate that I could secure for carrying it at that time. Please advise at once.

Yours, respectfully,

J. FAIRHURST.

Mr. WILSON. Haven't you right there the fact that the calculation was made on twenty miles instead of thirty-five?

Mr. BLISS. I understand, if you ask me the fact, that the calculation was so made as to treating it as thirty-five miles, and the result of the way the calculation was made was to require more money to be paid by the Government than if they had made the proper calculation. That is my understanding.

Mr. WILSON. It is just the other way.

Mr. BLISS. We are going to prove it. There is no use discussing it. We may be wrong.

Mr. WILSON. All right; but we say it is exactly the other way.

Mr. BLISS. We do not understand it so.

[The papers just read were submitted to the clerk to be marked for identification, and were by him marked B 5 and B 6, respectively.]

Mr. BLISS. The next is as follows:

PUEBLO, July 18, 1878.

CHARLES ADAMS,
Special Agent P. O. D., Denver, Col.:

DEAR SIR: In regard to your inquiries concerning the Saint Charles and Greenhorn mail route, I make the following statement of facts: Route 38135 is from Saint Charles, by Muddy Creek, to Greenhorn, thirty-five miles and back, twice a week. Thirty-five miles is the distance from Pueblo to Greenhorn, and thirty-three miles is the distance from Saint Charles to Greenhorn. I notified the department of what I supposed to be a mistake, but no notice was taken of it. The postmaster at Saint Charles received instructions to advertise for bids to carry the mail from the railroad to Saint Charles office. From the latest information I could get, I learn that one man put in a bid at \$40 per year, and afterwards withdrew his bid. The next bid was for \$250, which was immediately turned over to the carrier that carries the mail from Saint Charles. I sent the mail by railroad to the Saint Charles Station until the route agent refused to take it, since which time the carrier has come to this office for it. There isn't any office on the railroad at Saint Charles, nothing but a water-tank. The mail is all thrown to this office, and under the present state of affairs we have to make up the pouch here. It is my opinion that the mail should be carried from this office; under the contract, the distance is correct—simply a mistake of one word and a little sharp practice, taking advantage of the mistake. I haven't made any report to the department since July 1. I believe the postmaster at Saint Charles, as he was at the end of

the route, according to the present arrangement, I thought he could attend to it. I would have written you sooner, but expected you here.

Respectfully,

WM. INGERSOLL.

It is indorsed :

38135. July 23, 1878. Colorado.

Respectfully referred to the Postmaster-General, contract office. By an error in the advertisement which should have read from Pueblo, by way of Saint Charles, to Greenhorn, thirty-five miles. It was advertised from Saint Charles to Greenhorn, thirty-five miles, and so it seems that \$250 was added to the contract price as per Postmaster Ingersoll's statement. I think the contractor on route 38135 should be compelled to carry the mail the full thirty-five miles without the additional pay. It is impracticable to receive and dispatch mails at the Saint Charles water-tank, as there is no station, and trains do not often stop. The mails should start from Pueblo.

Very respectfully,

CHARLES ADAMS,
Special Agent, Post-Office Department.

[The paper was submitted to the clerk to be marked for identification, and was by him marked 7 B.]

Mr. BLISS. I now offer three inclosures in a jacket separately indorsed on which extension was made, but which papers went on the files of the department, and we assume they have been considered in making the change.

NEW YORK, April 23, 1879.

Hon. D. M. KEY,
Postmaster-General, Washington, D. C.:

SIR: I have the honor to recommend daily mail service between Pueblo and Greenhorn. The interests of the people of that section require these additional mail facilities.

Yours, truly,

J. B. CHAFFEE.

The indorsement is as follows :

1879, April 23. 38135. Colorado.
Hon. J. B. Chaffee asks daily service.

[Paper just read was submitted to the clerk and marked for identification, and was by him marked 8 B.]

Mr. BLISS. The next paper is as follows :

[Office of treasurer of Pueblo County, George Morgan, treasurer.]

PUEBLO, COLORADO, May 6, 1879.

Hon. H. M. TELLER :

DEAR SIR: A petition, signed by most of the citizens living in the southern part of our county, and signed by a great many citizens of Pueblo, to establish a daily mail between this point and Greenhorn, has been sent forward and presented to the Postmaster-General, or, I suppose, rather to the Second Assistant Postmaster-General. I wrote you to state that at least one-third of the citizens of Pueblo County outside of the city of Pueblo got their mail at Greenhorn post-office, and that until the building of the Denver and Rio Grande Railway south of Pueblo they had a daily mail, when it was cut down to twice a week. The expense of a daily mail will be but small, it being but thirty miles, and the people ought to have it. I will take it as a personal favor if you will see the proper authorities and urge the immediate establishing of this line, or rather of this change, from a bi-weekly to a daily mail.

Yours, truly,

J. G. CHILCOTT.

It is indorsed :

Increase of service recommended.

[The paper was submitted to the clerk to be marked for identification, and was by him marked 9 B.]

Mr. BLISS. I now offer the jacket. It is a little difficult to say whether the date is the 20th or 26th of June, 1879; but as the order at the bottom is dated June 26th, I presume it should read the 26th.

State of Colorado; number of route, 38135; termini of route, Pueblo and Greenhorn; length of route, thirty-two miles; number of trips per week, two; contractor, John R. Miner: pay, \$876.80 per annum.

Petition inclosed asking for one additional weekly trip, together with expedition of schedule. Hon. H. M. Teller and Hon. N. P. Hill, United States Senate, join in recommending the increase and expedition. There are three offices on the route that would be benefited by the increase of service recommended. Revenue, \$513 per annum. Contractor submits sworn statement in regard to the number of men and horses required under present and expedited schedule. Schedule to be reduced from sixteen to seven hours. One trip, \$438 per annum; expedition, \$2,630.40 per annum; total increase, \$3,068.80 per annum.

All that is in red ink; but written across that in blue pencil are the words, "Do this.—Brady." It was identified as Brady's handwriting.

"First, increase service, one trip a week from July 14th, 1879, and allow contractor \$438.00 per annum additional pay, being pro rata.

Second, reduce running time from sixteen hours to seven hours from July 14th, 1879 and allow contractor \$2,630.40 per annum additional pay, being pro rata.

BRADY.

On the back it is indorsed :

Order 5964, date, June 26th, 1879. Day-book, page 61. Wrote P. M. and contractor, June 62th, 1879.

The next paper I will read has this endorsement:

Petition for increase and expedition.

And is as follows :

Hon. D. M. KEY, *Postmaster-General* :

The undersigned, citizens of the State of Colorado, residing and getting their mail on route 38135, from Pueblo to Greenhorn, respectfully represent that it is necessary that the service on said route should be increased from two trips per week to six trips per week. The country is being very rapidly settled by people of intelligence, and ask the increased mail facilities for the benefit of those who have already made their homes in this section, and as an inducement to others to settle, frequent mails being one of the strongest inducements to intended settlers. We also respectfully request and urge that the running time be reduced so as to run from Pueblo to Greenhorn in eight hours, so that the citizens of Greenhorn may get their mails at a reasonable hour.

It is signed by fifteen names.

[Paper marked 11 B by the clerk.]

The next is as follows :

Hon. D. M. KEY, *Postmaster-General* :

We, the undersigned citizens of the State of Colorado, residing near and getting our mail at Muddy Creek post-office, on route 38135, from Pueblo to Greenhorn, respectfully represent that it is necessary that the service on said route should be increased from two trips per week to six trips per week, and a faster schedule.

Those words "and a faster schedule" we claim are in different ink and a different handwriting :

This section of the country is being rapidly settled by people of intelligence, and we ask the increased service for the benefit of us who have already made our homes here, and also as an inducement to others to settle. We also request that the schedule time be reduced so as to run from Pueblo to Greenhorn in eight hours, so that citizens along the route may get their mail at a reasonable hour.

That has sixteen names.

[The paper was submitted to the clerk and by him marked for identification 12 B.]

The next is as follows:

Hon. D. M. KEY, *Postmaster-General* :

The undersigned citizens of the State of Colorado, residing and getting their mail on route 38135, from Pueblo to Greenhorn, respectfully represent that it is necessary that the service on said route should be increased from two trips per week to six trips per week, on quicker time.

At the words "on quicker time" I shall ask the jury to look.

The country is being very rapidly settled by people of intelligence and ask for increased mail facilities for the benefit of those who have made their homes in this section, and as an inducement to others to settle, frequent mails being one of the strongest inducements to intending settlers. We also respectfully request and urge that the running time be reduced so as to run from Pueblo to Greenhorn in eight hours, so that citizens along the line may get their mails in a seasonable hour.

I hand these two petitions to the jury, and ask them to look at the words "and faster schedule" in one, and at the words "on quicker time" in the other.

The COURT. I assume those petitions to ask expedition in other parts.

Mr. MERRICK. Yes; they ask for expedition in other parts to eight hours.

Mr. BLISS. The one signed by Teller does not ask for expedition in the other parts.

[Mr. Bliss left the court-room at this point.]

Mr. MERRICK. Mr. Bliss has been called out, and I shall have to take up the reading in the order in which he had arranged. I had arranged the case in a little different order. Here is a fourth petition, your honor:

Hon. D. M. KEY,
Postmaster-General, Washington, D. C.:

DEAR SIR: The undersigned, your petitioners, most respectfully ask you to grant us the following petition:

That you increase the service on route 38135 from two trips per week to a daily mail. In asking this, we do it with the conscientious feeling that we are requesting something of you that did you know the circumstances and condition of the country personally, that you would have no hesitance in acceding to our wishes. Our people are a reading community, and many of us wish to keep posted in the doings of the world through the medium of a daily paper. This can only be accomplished by having a daily mail again. Our population is increasing faster than any one can imagine with seeing the number of emigrants—

It ought to be "without seeing."

Mr. WILSON. Yes, sir. You do not read with that emphasis that you usually do.

Mr. MERRICK. I will emphasize when I come to those parts to which I wish to call your attention.

Mr. WILSON. I love to hear you read, because you do it so well.

Mr. MERRICK. [Continuing to read:]

Our population is increasing faster than any one can imagine with seeing the number of emigrants, and while a year since a semi-weekly mail supplied our wants, with our present population it does not meet with the necessities of the people. Hence your petitioners will ever pray, &c.

It is signed by thirteen names.

The COURT. Was it in the jacket?

Mr. MERRICK. I am reading from the contents of the jacket.

Mr. TOTTEN. Has that been altered?

Mr. MERRICK. No; I do not think that has been altered at all. That simply asks for an increase to a daily mail.

The COURT. Yes, from a tri-weekly.

[The paper just read by counsel was submitted to the clerk to be marked for identification, and was by him marked 14 B.]

Mr. MERRICK. The next is as follows:

GREENHORN P. O., PUEBLO COUNTY, STATE OF COLORADO.

Hon. D. M. KEY,

Postmaster-General, Washington, D. C.:

DEAR SIR: The undersigned, citizens of the State of Colorado, county aforesaid, residing and getting their mail on route 38135, from Pueblo to Greenhorn, respectfully represent that it is necessary that the service of said route should be increased from two trips a week to three trips per week and faster time. The country is being very rapidly settled by people of intelligence, and we ask the increased mail facilities for the benefit of those who have already made their homes in this section, and as an inducement to others to settle, frequent mails being one of the strongest inducements to intending settlers.

That is signed by about eighty people.

Mr. TOTTEN. Let us see that?

Mr. MERRICK. You have seen it. Mr. Bliss showed them all to you.

Mr. TOTTEN. No, sir; he did not.

Mr. MERRICK. The indorsement on the back of the petition is as follows:

I respectfully request that the prayer of the petitioners be granted.

JAMES B. BELFORD.

[Submitting papers to counsel for defense.] Here, gentlemen, look at these four papers, and then give them to me. I forgot to read a part of this petition which I last read, upon the fourth page of which is the recommendation of Belford. It also contains the following indorsement:

1879, April 18th, Colorado. I respectfully recommend the increase of service herein prayed for.

H. M. TELLER.

N. P. HILL.

Mr. TOTTEN. I think we will have to ask you to read those names; some of them may be important.

Mr. MERRICK. Which names?

Mr. TOTTEN. The names of the petitioners. I do not know the use of reading the petition without reading the names of the petitioners.

Mr. MERRICK. None of them have been read before.

Mr. TOTTEN. I guess we had better do it. I know some of these men.

Mr. MERRICK. If you know them read them. I won't read them. Now, I will hand them to the jury that they may see where the interlineation is. [Submitting papers to the jury.]

The COURT. Did you read the interlineation?

Mr. MERRICK. I read it all.

The COURT. I did not hear any recommendation for expedition in that petition.

A JUROR. The words "and faster time?"

Mr. MERRICK. Yes. "And faster time." They observe the interlineation quick enough.

[The paper just read by counsel was submitted to the clerk to be him marked for identification, and was marked 15 B.]

Mr. MERRICK. The next paper is as follows :

WASHINGTON, D. C., May 8, 1879

Hon. THOMAS J. BRADY,
Second Assistant P. M. General :

SIR: I have the honor to transmit herewith additional petitions for an increase of service on route 38135, Pueblo to Greenhorn, and to request that they be placed with the other papers in the case.

Respectfully,

JOHN R. MINER

On the back of it is the following indorsement :

1879, May 8th, 38135. John R. Miner, transmits petitions for increase and expedition.

[Paper submitted to clerk and marked by him 16 B.]

The next letter is as follows:

APRIL 16, 1879

Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General :

SIR: I beg to transmit herewith my proposition for carrying the mail on route from Pueblo to Greenhorn, Colorado, on an expedited schedule. Hoping it will receive favorable consideration, I am,

Very respectfully,

JOHN R. MINER

It has the following indorsement :

1879, April 18th ; 38135, Colorado. Proposal of John R. Miner to increase service and expedite schedule.

[Paper submitted to the clerk and marked for identification 17 B.]
Mr. HENKLE. Mr. Miner informs me that that paper which you just read, Mr. Merrick, is not in his handwriting.

Mr. MERRICK. It does not make any difference what Mr. Miner informs you.

Mr. HENKLE. Then I will have to require you to prove it. Mr. Merrick suggests that that is not his handwriting or his signature.

Mr. MERRICK. Whose is it? Does Mr. Miner know? It is either his or Rerdell's.

Mr. HENKLE. It is not necessary for me to inform you whose

Mr. MERRICK. It is necessary for you to inform the court in whose handwriting it is. I say it is in the handwriting of Miner or Rerdell.

THE COURT. It is admitted because it comes from the Post-Office in connection with these papers, and is what was acted upon.

Mr. HENKLE. I propose to object that that is not the writing of the client, Mr. Miner, and except to the admission of it in evidence.

THE COURT. Very well. How is it indorsed, Mr. Merrick?

Mr. MERRICK. The indorsement was proved to be in the handwriting of the clerk. The indorsement is as follows :

1879, May 8th ; 38135, Colorado. John R. Miner transmits petition for increase of service and expedition.

Mr. HENKLE. Mr. Miner says it is not in his handwriting at all.

Mr. MERRICK. Let him go on the stand.

Mr. HENKLE. You have not proved it.

Mr. MERRICK. I have proved it as a record of the department as such it goes in.

Mr. TOTTEN. The court has decided it goes in. But these all

subject to objection. We claim that every one of these is wholly incompetent testimony.

The COURT. General Henkle reserves a special exception.

Mr. TOTTEN. I only want it understood that our general objection covers all this kind of testimony which we say has not been verified.

The COURT. Yes.

Mr. TOTTEN. Very well.

Mr. MERRICK. We will have this made clear enough. Here is a proposition sent to the department from which he gets the benefit. If it is not in his handwriting it is in Rerdell's.

Mr. TOTTEN. How do you know?

Mr. MERRICK. By reason of the handwriting.

The COURT. Go on with the testimony.

Mr. MERRICK. The next is as follows:

WASHINGTON, D. C., 17th April, 1879.

Hon. THOMAS J. BRADY.

Second Assistant Postmaster-General:

The number of men and animals necessary to carry the mail on route 38135—

Mr. HENKLE. (Interposing.) Excuse me one moment. Is that the affidavit that you propose to read?

Mr. MERRICK. If I read it you will hear.

The COURT. You have no right to read it until he knows what it is.

Mr. MERRICK. It is admitted in evidence.

Mr. HENKLE. Oh, no; it has not been admitted in evidence.

Mr. MERRICK. It has been admitted in evidence.

Mr. HENKLE. I have not known it.

Mr. MERRICK. The court admitted all these records in evidence, and I am reading the records that the court admitted.

Mr. HENKLE. I have not understood that this is admitted.

The COURT. These papers were proved as coming from the depository at the Post-Office Department. They were proved yesterday, but they were not offered in evidence yesterday. They are now going through that process. The other side have a right to look at them.

Mr. MERRICK. I have handed them to them. Brother Wilson handed them back to me fifteen minutes ago.

Mr. HENKLE. I am making my objection for the first time I have had the opportunity to do it.

The COURT. Why do you object?

Mr. HENKLE. It is an affidavit. It is claimed to be a perjury, which is a felony. I expect it to be admitted now, but I want to reserve a special exception, as I shall hereafter move the court, at the proper time, to exclude all that kind of testimony from the jury.

The COURT. He is not on trial for perjury now; he is on trial for conspiracy.

Mr. HENKLE. I know that. I simply want it understood that it is not going in with our consent.

The COURT. Oh, I understand.

Mr. HENKLE. And I shall hereafter ask the court to rule out all that kind of testimony.

Mr. TOTTEN. Is that one of the affidavits that was identified by Mr. Taylor?

Mr. MERRICK. No, sir; this was not taken before Taylor, it was taken before Kellogg. Taylor identified one of the affidavits of Mr. Peck.

• Mr. TOTTEN. All there is about that is that it is sanctified by having been found in the Post-Office.

Mr. MERRICK. And by the fact that it is perjury, I suppose.

The COURT. Perjury is not a felony, at any rate.

Mr. HENKLE. It is under our statute, your honor?

Mr. MERRICK. Under the United States statute?

Mr. HENKLE. Yes, sir.

The COURT. It makes it punishable with imprisonment in the penitentiary.

[Mr. Merrick here read the oath and indorsement of John R. Miner, on route 38135, stating the number of men and animals necessary to carry the mails before and after the reduction of the schedule. The paper was marked by the clerk for identification 18 B.]

Mr. MERRICK. In the jacket was also a calculation or a paper with some figures on it which properly belongs in evidence.

The COURT. I do not know that.

Mr. MERRICK. It has no indorsement on it.

• Mr. TOTTEN. It is inside of the jacket. It goes in under the rule.

Mr. MERRICK. I would rather a great deal not have it in.

Mr. TOTTEN. All right, but it is sanctified by being found in a particular jacket.

Mr. MERRICK. What shall I do with it?

The COURT. Do not read it.

Mr. MERRICK. Gentlemen, here is a map from the department.] Producing the map.]

Mr. TOTTEN. Is that a correct map, Mr. Merrick?

Mr. MERRICK. I question very much whether you will say it, as I propose to offer it. You may look at it. [Submitting the same to counsel for defense.] I offer it as a map, for whatever it may be worth. I will show the map to the jury, without offering to prove it, so that they may see the locality, and get an idea of the relation of Pueblo to Saint Charles. It becomes important that they should have that in their minds.

[The map was exhibited to the jury.]

Mr. TOTTEN. I cannot find Agate on that map or any other.

Mr. BLISS. No; Agate is not on there. It was a sort of mushroom that came up and went out.

Mr. MERRICK. Agate post-office, to which we are coming now in the evidence, is not there, because they do not put down localities that once were post-offices, but are such no longer.

Mr. BLISS. I now offer in evidence a jacket, being one of those proved yesterday.

Date, November 10, 1880. State, Colorado.

No. of route, 38135. Termini of route, Pueblo and Greenhorn.

Length of route, thirty-two miles. Number of trips per week, three.

Contractor, John R. Miner. Pay, \$3,945.60 per annum.

Subcontractor, S. W. Dorsey. Pay, \$3,945.60 per annum.

The office at Agate, Pueblo County, Colorado, is at present receiving special supply. It can be embraced in this route by increasing the distance three miles, and the contractor's pay \$369.90 per annum.

That is in red ink. Then the order:

From December 1, 1880, embrace Agate in this route next after Saint Charles, increasing the distance three miles, and allowing the contractor and subcontractor \$369.90 per annum additional pay, being pro rata.

BRADY.

The paper was marked by the clerk 19 B.

Inclosed in that jacket are two letters :

AGATE, COLORADO, *September 30, 1880.*

Hon. THOMAS J. BRADY,
Second Assistant Postmaster General :

[Stamped as received at the Post-Office Department office of the
Second Assistant Postmaster-General October 7, 1880.]

DEAR SIR: Under date of April 20, I received orders from your office to supply this place with the mail as often as practicable for the pay allowed, the expense of so supplying not to exceed two-thirds of my compensation per annum. Allow me to say that it could not be done for that sum, and consequently I have not put on service.

Very respectfully, yours,

J. S. PIPER, *P. M.*

[The paper was marked by the clerk 20 B.]

The other is indorsed: 1880. Route 3185, Colorado. No. 2009. Agate.
It is as follows :

[Stamped with the inspection stamp, October 19, 1880.]

Wm. H. T.]

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, October 7, 1880.

SIR: By direction of the Postmaster-General, you are desired to give answer to the underwritten inquiry by writing it opposite thereto, or on the next page, and returning this sheet, containing such answer, signed and dated, without delay.

Respectfully,

J. L. FRENCH,
Acting Second Assistant Postmaster-General.

To POSTMASTER AGATE,
Pueblo Connty, Colorado.

Inquiry of Second Assistant Postmaster-General.

Answer of postmaster, Agate.

Would it be practicable to embrace your office on route No. 38135 from Pueblo to Greenhorn ?

Dated October 13, 1880.

How much would it increase the distance one way by the usually traveled road to change the service as noted above ?

It would.

Answer, three miles.

If we could have service on this route at this office once a week each way, say from the Saint Charles office on Saturdays to this office, and thence to the Greenhorn, returning on Monday via this office and the Saint Charles, it would be satisfactory.

Very respectfully, yours,

J. S. PIPER, *Postmaster.*

[The paper just read was by the clerk marked 21 B.]

The next is as follows :

Date, December 14, 1880 ; State, Colorado.

Number of route, 38135.

Termini of route, Pueblo and Greenhorn.

Length of route, thirty-five miles.

Number of trips per week, three.

Contractor, John R. Miner.

Pay, \$4,315.50 per annum.

Subcontractor, S. W. Dorsey.

Pay, \$4,315.50 per annum.

An order issued November 10, 1880, to embrace Agate on this route, increasing the

distance three miles and the contractor's pay \$369.90 per annum. It now appears that the distance should have been increased eight miles. The importance of the office will not justify the expenditure.

Agate should be made special.

Order number 13587. Date, December 14, 1880.

Day-book, page 121.

Wrote P. M. and contractor December 14, 1880.

From January 1, 1881, omit Agate from this route, decreasing the distance three miles and deduct from contractor's and subcontractor's pay \$369.90, being pro rata.

Allow contractor and subcontractor one month's extra pay on service dispensed with.

BRADY.

[The paper above was marked by the clerk 22 B.]

The next is as follows:

Wm. H. T.]

UNITED STATES POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, November 10, 1880.

SIR: The contractor on route 38135, from Pueblo to Greenhorn, has been instructed, in pursuance of an order of the Postmaster-General, to change the service so as to embrace Agate next after Saint Charles. The order is to take effect December 1, 1880, and you will report if it is then complied with.

Respectfully, &c., &c., &c.,

THOMAS J. BRADY,
Second Assistant Postmaster-General.

POSTMASTER PUEBLO,
Pueblo County, Colorado.

[The paper was marked by the clerk 23 B.]

Mr. WILSON. That has a stamped signature.

Mr. BLISS. A stamped signature, Brady.

Mr. TOTTEN. It is on a printed circular, is it not?

Mr. BLISS. It is a printed circular, filled in and stamped with Brady's signature. It has "Wm. H. T." I suppose that is Turner. It is a mere notice that Agate has been embraced in the route.

Mr. MERRICK. And the next month they took Agate out.

Mr. BLISS. The next is as follows:

[Post-office, William Ingersoll, postmaster; Cyrus B. Mark, assistant postmaster.]

PUEBLO, COLORADO, Dec. 2, 1880.

SECOND-ASSISTANT POSTMASTER-GENERAL,
Washington, D. C.:

SIR: The carrier of the mail on route 38135 has informed me that he will not stop at Agate post-office, unless the pay is increased for said service, and the time extended in carrying the mail from Pueblo to Greenhorn. He claims that he will be obliged to go eight miles off the present route to take in Agate, and that there is no broken road, and for a part of the road the driver must get out and prevent the carriage from upsetting. As I am not acquainted with the road or the location of Agate, of course, I cannot state whether all he claims is true.

Very respectfully,

WILLIAM INGERSOLL, *Postmaster.*

[The paper above was marked by the clerk 24 B.]

Upon that Agate was struck out.

Mr. TOTTEN. What is the indorsement?

Mr. BLISS. I read that. It is on the jacket I read first. The contractor was paid for a month when he did not do any service, but ought to have done it, and also for a month when he did not do any service that he ought not to have done.

Mr. TOTTEN. Why did not you make him pay the money back?

Mr. BLISS. We did, after Mr. Brady went out.

Mr. WILSON. Is there any proof of that?

Mr. BLISS. There is going to be some.

The next paper is as follows :

Date, October 1, 1878. State, Colorado.

No. of route, 38135.

Termini of route, Pueblo to Greenhorn.

Length of route, thirty-two miles.

Number of trips per week, two.

Contractor, John R. Miner.

Pay, \$576.80 per annum.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of E. M. Ames, whose post-office address is Pueblo, Colorado, for the service on this route, at \$548 per annum, from July 1, 1878, to September 9, 1878, and from September 10, 1878, to June 30, 1882, at \$612 per annum, has been filed in this office.

BRADY.

Inside of this jacket is the subcontract. It is apparently on the same blank as the subcontract on the last route.

[Mr. Bliss then read from the subcontract signed by John R. Miner, United States Government contractor, and E. M. Ames, subcontractor.]

[The jacket last read was marked by the clerk 25 B, and the subcontract 26 B.]

Mr. Bliss then read the following :

Date, December 2, 1878. State, Colorado.

No. of route, 38135.

Termini of route, Pueblo and Greenhorn.

Length of route, thirty-two miles.

Number of trips per week, two.

Contractor, John R. Miner.

Pay, \$576.80.

Contractor and subcontractor request permission to withdraw subcontract.

From October 1, 1878, stop all payment to subcontractor, the contractor and subcontractor having asked for withdrawal of subcontract.

BRADY.

I call your honor's attention to the fact that this jacket is dated December 2, 1878. The paper is indorsed as November 19, 1878.

Route 38135. Subcontractor asks leave to withdraw subcontract from the files of the department.

PUEBLO, COLORADO, November 19, 1878.

Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General :

I respectfully request permission to withdraw my subcontract on route 38135 from the files of the department, to date from October 1, 1878.

Respectfully,

E. M. AMES.

[The last two papers read were marked by the clerk 27 B and 28 B, respectively.]

The next is as follows :

Date, November 11, 1879. State, Colorado.

Number of route, 38135.

Termini of route, Pueblo and Greenhorn.

Length of route, 32 miles.

Number of trips per week, 3.

Contractor, John R. Miner.

Pay, \$3,945.60 per annum.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of S. W. Dorsey, whose post-office address is Washington, D. C., for service on this route at \$3,945.60 per annum, from October 1, 1879, to June 30, 1882, has been filed in this office, subject to fines and deductions.

FRENCH.

[The paper above was marked by the clerk 29 B.]

The contract inclosed recites that whereas John R. Miner has been accepted to law as contractor for carrying United States mail on route 38135, from Saint Charles to Greenhorn, Colo., twice a week, from July 1, 1878, to June 30, 1880, United States Post-Office Department. Now, this indenture witnesses that on the first day of April, 1879, John R. Miner, of the first part, and S. W. Dorsey, of the second part, have agreed as follows:

That the said S. W. Dorsey, of the second part, do jointly and severally covenant, and agree, and do bind themselves "and his sureties" [stricken out] to transport the United States mails from Saint Charles to Greenhorn, two trips per week, from the 1st day of July, 1879, to the 30th day of June, 1882, inclusive, in accordance with the advertised schedule of time, and in full compliance with the requirements of the postal laws and the regulations of the Post-Office Department of the United States, subject to all the requirements and liabilities of a subcontractor with the Post-Office Department, for an annual sum of \$548.

It is provided by the contract that S. W. Dorsey shall receive one hundred per cent. of all sums allowed for increased compensation. This contract is signed by John R. Miner, Government contractor, and S. W. Dorsey, subcontractor, and witnessed by M. C. Rerdell.

[The paper last read was marked by the clerk 30 B.]

The next is as follows:

Date, December 7, 1880. State, Colorado.
 No. of route, 38135.
 Termini of route, Pueblo to Greenhorn.
 Length of route, 35 miles.
 No. of trips per week, 3.
 Contractor, John R. Miner.
 Pay, \$4,315.15 per annum.
 Subcontractor, S. W. Dorsey.
 Pay, \$4,315.15 per annum.
 Contractor and subcontractor request withdrawal of subcontract.
 For request see case on route No. 38102, bearing this date.
 From January 1, 1881, stop all payment to subcontractor, the contractor having requested the withdrawal of subcontract.

J

[The paper above was marked 31 B by the clerk.]

The next is as follows:

Date, July 31, 1879. State, Colorado.
 No. of route, 38135.
 Termini of route, Pueblo and Greenhorn.
 Length of route, 32 miles.
 No. of trips per week, 2.
 Contractor, John R. Miner.
 Pay, \$3,945.60.
 Schedule desired as below:
 Leave Pueblo Monday, Wednesday, and Friday at 7 a. m.
 Arrive at Greenhorn by 2 p. m.
 Leave Greenhorn Tuesday, Thursday, and Saturday at 7 a. m.
 Arrive at Pueblo by 2 p. m.
 Change as above.

FF

[The paper just read was marked by the clerk 32 B.]

The next is as follows:

Wm. H. T.]

UNITED STATES POST-OFFICE DEPARTMENT
 CONTRACT OFFICE
 Washington, June 2, 1881

SIR: A change of schedule is desired on mail route No. 38135, on which John R. Miner is the contractor, because of increase of service.

Annexed hereunto is a blank, which the Postmaster-General requests you to fill out with such days and hours as will preserve the proper connection with other routes, and return to this office, verified by your signature and by the signature of the contractor at the other end of the route and of the contractor. Or if they, or

them, after proper consultation, shall not agree with you as to a schedule, let the reasons be given.

The service is three times a week.

Be careful to allow no more than seven hours running time each way.

Respectfully, &c.,

THOMAS J. BRADY,
Second Assistant Postmaster-General.

POSTMASTER PUEBLO, *Utah County, Colorado.*

SCHEDULE.

The undersigned postmasters and contractors recommend the following departures and arrivals on mail route No. 35135, State of Colorado:

Leave Pueblo, Colo., on Monday, Wednesday, and Friday mornings at 7 a. m.; arrive at Greenhorn, Colo., at 2 p. m. on said day.

Mr. MERRICK. Those hours are important.

Mr. BLISS. [Continuing to read:]

Leave Greenhorn, Colo., Tuesday, Thursday, and Saturday at 7 a. m., and arrive at Pueblo, Colo., at 2 p. m. on said days.

WILLIAM INGERSOLL,
Postmaster at Pueblo, Colo.
GEORGE SEARS,
Postmaster at Greenhorn.
JOHN R. MINER,
Contractor.

[The paper just read was marked by the clerk 33 B.]

The next is the following jacket:

Date, 1880, July 23. State, Colorado.

No. of route, 35135.

Termini of route, Pueblo and Greenhorn.

Length of route, 32 miles.

Number of trips per week, 3.

Contractor, John R. Miner.

Pay, \$3,945.60.

Subcontractor, S. W. Dorsey.

Pay, \$3,945.60.

Schedule desired as below: Leave Pueblo Tuesday, Thursday, and Saturday at 7 a. m.; arrive at Greenhorn by 2 p. m. Leave Greenhorn Monday, Wednesday, and Friday at 7 a. m.; arrive at Pueblo by 2 p. m. Change as above.

BRADY.

[The paper just read was marked 34 B by the clerk.]

The next is as follows:

POST-OFFICE,
Colorado Springs, Colo., July 10th, 1880.

WM. B. THOMPSON, Esq.,

General Supt. R. M. S., Washington, D. C.:

DEAR SIR: I have the honor to recommend that the schedule on route Pueblo to Greenhorn, Colo., three times a week, be changed so as to leave Pueblo Tuesdays, Thursdays, and Saturdays, and returning from Greenhorn Mondays, Wednesdays, and Fridays.

This change is recommended at the request of parties in Greenhorn who are the principal persons accommodated by the route, and will enable them to get the Pueblo weekly mails more promptly.

Respectfully,

W. L. HUNT,
Supt. R. M. S.

It is indorsed:

POST-OFFICE DEPARTMENT,
OFFICE OF THE GENERAL SUPERINTENDENT
OF RAILWAY MAIL SERVICE.
Washington, July 14, 1880.

Respectfully forwarded to Hon. Thomas J. Brady, Second Assistant Postmaster-Gen-

eral, Washington, D. C., approving the recommendation of Superintendent Hunt for change of schedule.

N. G. SUMMERFIELD,
Acting General Superintendent.

Mr. WILSON. Of what?

Mr. BLISS. It don't say what, but I suppose of the railway mail service from the heading.

[The paper last read was marked by the clerk 35 B.]

Mr. BLISS. The next is a distance circular.

Mr. HENKLE. Before you read that, allow me to call your attention to what was doubtless an unintentional mistake on your part. In reading the contract between Miner and Dorsey, when you came to read the signature, you read "John R. Miner, contractor [seal], by his attorney, S. W. Dorsey."

Mr. BLISS. No; I read "S. W. Dorsey, subcontractor," and then I read the name of M. C. Rerdell as witness.

Distance circular.

[Stamped "Contract Office, August 2, 1878, P. O. D."]

U. S. POST-OFFICE DEPARTMENT,
OFFICE OF SECOND ASSISTANT POSTMASTER-GENERAL,

WASHINGTON, June 14, 1878.

SIR: To preserve accuracy in the route books of the department, the Postmaster-General requests the insertion, in the columns below, of the official names of the post-offices on Colorado route No. 38135, between Saint Charles and Greenhorn, to be written in the order in which they are situated, with the distance from one office to the other.

Each postmaster will give the distance of his office from the post-office immediately preceding, certifying the same by his signature. Fulfill this duty promptly, and return the paper without delay to this office.

Respectfully, &c.,

THOMAS J. BRADY,
Second Assistant Postmaster-General.

Addressed to Mr. JOHN R. MINER,
Contractor, Sandusky, Erie County, Ohio.

From—	To—	Miles.	Postmaster's signature.
Distance from Saint Charles to Muddy Creek		10	Wm. K. Carlile.
Distance from Muddy Creek to Greenhorn		10	George Sears.

[The paper just read was marked by the clerk 36 B.]

Mr. WILSON. [Referring to a paper just handed him.] If your honor please, the paper that Colonel Bliss has now handed to me, and that he now proposes, as I understand, to offer in evidence, has relation to the action of the Post-Office Department since General Brady and Mr. Turner went out of office. I object to it as not being pertinent or proper in this case. It is no action of the department while they were in office, but the action of those who have succeeded them in office.

The COURT. Has it any relation to the others?

Mr. WILSON. Not at all. It simply has relation to what the department has done in regard to this service since my client had anything to do with the office.

Mr. BLISS. I offer it, your honor, for this reason: It has been thrown out here in some of the side-bar remarks, but not otherwise, that we have alleged certain things and have not proved them, and are going

right along now under this administration—reform administration, as it has been called—with the same service of which we complain. I only offer this testimony for the purpose of showing that the condition of things inaugurated under Mr. Brady was terminated soon after he went out of office. Whether it is admitted or rejected as evidence, it will prevent these gentlemen from arguing to the jury that we have not shown that this condition of things created by Mr. Brady has ceased to exist.

The COURT. I do not think it is competent evidence.

Mr. WILSON. Mr. Bliss's statement is a concession that they knew it was not competent when they offered it.

Mr. BLISS. No; it is not.

Mr. TOTTEN. We would like to compare administrations with the reform administration at the proper time, your honor. The comparison would result to the disadvantage of the reform administration.

Mr. BLISS. I used the word "reform" because you did.

Mr. MERRICK. We propose to offer to show that all these fraudulent allowances were stricken off as soon as discovered by the present incumbent.

Mr. WILSON. That imputation is certainly very improper for the counsel for the Government to make in this case. The question whether they were fraudulent or not is one of the questions which we are trying in this case, and which we are very willing to try with the gentlemen.

The COURT. That is the only question we are trying.

Mr. MERRICK. That is the only thing we are trying. I call them fraudulent to designate that class of allowances.

The COURT. When they undertake to set up as a defense that the present administration has continued those frauds, you probably could have a chance to bring in this testimony to rebut that defense, but I do not think now it is competent evidence. I do not think they are likely to set up as a defense that the present administration has continued to carry out that programme.

Mr. WILSON. No, if your honor please, we do not propose to set up any such defense, and we do not propose to be judged by this administration either.

The COURT. And I do not propose to sit on any such question either.

Mr. WILSON. I did not suppose your honor did.

Mr. BLISS. I have read all of the records which were proved, your honor.

At this point (12 o'clock and 30 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. WILSON. [A witness having been called to prove the maps and not having responded.] If there is any inaccuracy about the maps we will get at it hereafter.

[Copies of the map purporting to show the route from Saint Charles to Greenhorn were then distributed to counsel and jury.]

Mr. MERRICK. You will observe that Agate is not marked on this map. This map was made from the post-office maps, regularly and accurately, I believe. We will find out by and by. As Agate is no longer a post-office it does not appear on the map.

The COURT. It came up and went out.

Mr. MERRICK. Yes. I will have the witness put it on when he appears.

WILLIAM B. FARISH sworn and examined.

By Mr. MERRICK :

Question. Where do you reside ?

Mr. HENKLE. Before we proceed, I wish to say that I am informed that this map was made upon recent information in the department, and the distances are not such as they were when the affidavit was made.

Mr. MERRICK. I will put the witness on the stand as soon as he comes. I see, according to all the orders that have been read here, that the distance from Pueblo to Greenhorn is put down as thirty-two miles.

The COURT. It is only twenty-nine, according to the map.

Mr. MERRICK. Twenty-nine, according to the map.

The COURT. Twenty-nine to South Pueblo.

Mr. HENKLE. The original distance, as we claim, was twenty-five miles from Greenhorn to Saint Charles.

Mr. MERRICK. How far do you claim it to be from Pueblo to Greenhorn ?

Mr. HENKLE. That is twelve miles further.

Mr. WILSON. It was originally advertised from Saint Charles to Greenhorn as being thirty-five miles, and the distance from Pueblo to Saint Charles is twelve miles.

The COURT. Yes.

Mr. WILSON. That is forty-seven miles.

Mr. MERRICK. It is paid for as forty-seven miles.

Mr. WILSON. No. That is where the prosecution has fallen into error about this whole thing.

Mr. MERRICK. I guess we have not fallen into much error about it.

Mr. WILSON. We will see.

Mr. MERRICK. On the back of the order it is marked as thirty-three miles.

Mr. WILSON. On the back of the paper where the increase was made the calculation was made on twenty miles from Saint Charles to Greenhorn. They had ascertained it was only twenty miles, and they made the increase and expedition on the basis of twenty miles.

Mr. TOTTEN. The distance circular says it is ten miles from Greenhorn to Muddy Creek, and ten miles from Muddy Creek to Saint Charles.

Mr. WILSON. When they came to add on the other twenty miles they made the calculation just exactly as these papers show.

Mr. MERRICK. I think the counsel will find themselves laboring under very serious mistake.

Mr. TOTTEN. It may be.

The COURT. That is neither here nor there just now.

Q. Where do you reside ?—A. Pueblo, Colo.

Q. I thought you lived at Greenhorn ?—A. No, sir.

Q. What has been your occupation ?—A. Different things. I have been driving a team, or carrying the mail, out there awhile, and I have staid in a stable.

Q. Have you ever carried the mail over the route running from Greenhorn to Pueblo ?—A. I did.

Q. When?—A. I commenced about the 18th of August and carried it until some time in November.

Q. What year?—A. Eighteen hundred and eighty one.

Q. What is the distance from Greenhorn to Pueblo?—A. Thirty-two miles.

Mr. WILSON. If your honor please, I believe I will object to that. We have got the record of the distance here. I do not see the necessity for going into another examination such as we had before on the other route when the post-office records show exactly what the distance is, under the certificate of the postmasters, as required by law.

Mr. MERRICK. There are many reasons why the distance should be known.

Mr. WILSON. I do not want to go into it.

Mr. MERRICK. I do.

Mr. TOTTEN. The Government is bound by the records they introduce, as I understand.

The COURT. You are not bound by them, nor are they.

Mr. INGERSOLL. The contract says that we are.

The COURT. I do not know that. They are part of the evidence; but how far they bind anybody I do not know.

Mr. MERRICK. Now, gentlemen, if your distance is all right, as you say it is, what is your objection?

The COURT. Go on, and let them have an exception.

Q. What is the distance from Pueblo to Greenhorn?—A. Thirty-two miles.

Mr. INGERSOLL. Let me read this to the court, and see if it will not save something:

SEC. 592. Bidders must inform themselves as to the character of service. The distances stated in the advertisements for mail proposals are given according to the best information; but no increased pay will be allowed should they be greater than advertised, if the points to be supplied are correctly stated. Bidders must inform themselves on this point, and also in reference to the weight of the mail, the condition of the roads, hills, streams, &c., and all toll-bridges, ferries, or obstructions of any kind by which expense may be incurred. No claim for additional pay, based on such grounds, can be considered; nor for alleged mistakes or misapprehension as to the degree of service; nor for bridges destroyed, ferries discontinued, or other obstructions increasing distance, occurring during the contract term. Post-offices established during a contract term are to be visited without extra pay, if the distance be not increased, and at pro rata pay for any increase of distance.

Now, it seems, according to this, that we are bound by the circular of the department that they put out at the time we bid.

The COURT. Upon what ground do you offer the testimony?

Mr. MERRICK. Because the actual distance becomes material in several respects, and especially in one. I will only make one point, which is sufficient to sustain the proposition: Suppose that the distance contained in the advertisement as to Greenhorn and Pueblo should be a hundred miles, and the actual distance should be only twenty-five miles. Now, the number of men and animals necessary to carry the mail between Pueblo and Greenhorn could not be determined by the statement of distance in the official record. It is to be determined by the actual distance and the character of the road; and when an affidavit is made that so many men and so many animals are needed to carry the mail from one point to the other the truth of that affidavit must be shown, not by the record evidence in the department, but by the actual distance on the face of the earth, the contractor, of course, being presumed to know.

Mr. INGERSOLL. I do not think it has anything to do with the case. The department says, "If we let this contract at seventy-five miles, and it is

in fact one hundred, you have got to stand it, and it is none of our business." Then, I say, if they let it at one hundred miles, and it is only seventy-five, they have got to stand it, and all future calculations must be made upon the basis that it is one hundred miles.

The COURT. It does not say that.

Mr. INGERSOLL. It says they cannot correct it.

The COURT. Not as to the contract. The parties are bound by the distance laid down in the contract. But when an application is made for expedition, and an affidavit accompanies that application, and the question is whether the party who made that affidavit made it in good faith, then the actual distance becomes important.

Mr. INGERSOLL. I do not see that it does. As a matter of fact we have got the actual distance in the circulars. There is no dispute about that.

Mr. TOTTEN. It is proved by the postmasters, officials whose duty it is to find out. That is here as a matter of record, and now they bring the driver from that route to prove that the post-office officials in that country made a false report.

Mr. MERRICK. No, I do not.

The COURT. I do not know what the witness may testify to, but here is a man who seems to have been over the route. We will hear what he has to say.

Mr. HENKLE. Before your honor makes a ruling, let me offer this suggestion: This affidavit was made by Mr. Miner, who never saw the route, and who takes the estimate of the distance and the number of men and horses that are required from the post-office reports. Now, he has a right to base his estimate upon the information furnished by the department.

Mr. MERRICK. Has he?

Mr. HENKLE. Certainly he has.

The COURT. According to the regulations of the department, as all risks are taken both ways, the contract gives him no information as to the actual distance.

Mr. CHANDLER. Is not this a correct principle? If they introduce documentary evidence to prove any fact they cannot contradict it. They have introduced it, and having done so, does it not bind them?

The COURT. No, not under the regulation you have read.

Mr. CHANDLER. Does it not under the rules of evidence?

The COURT. No.

Mr. CHANDLER. Can a man introduce a deed—

The COURT. [Interposing.] I am talking about this case. I do not deal in abstraction at all. In regard to this case the law of the department is that if the distances between two points on a route are stated in the advertisement and in the contract as greater than they actually are, say 25 per cent. greater, that is to the advantage of the contractor. So, if the distance is less, it is the same way. The parties take all the risk of that. Sometimes it is to the advantage of the Government and sometimes to the advantage of the contractor. It is well known that these distances are merely approximate. They are not set down as ascertained. They are merely taken on the basis of the advertisement for bids. Sometimes the contractor gets the advantage and sometimes the Government. But when an application is made for expedition, and the question becomes important whether so many additional horses and so many additional men are required, then it seems to me that the actual distance becomes a fair subject of investigation and the contract is not binding.

Mr. HENKLE. This is a criminal case, your honor, and the accusation on the part of the Government is that the affidavit was made corruptly. Now, I want simply to submit to the court whether the affiant, in the absence of knowledge to the contrary, has not a right to assume that the Government statement of the distances on which they let their contract is the correct one and to make his affidavit based upon that statement of distances.

The COURT. I do not know whether he has or not.

Mr. HENKLE. Would it not be necessary, in the first place, in order to contradict the affidavit to show that the affiant knew that that was not the true distance?

Mr. MERRICK. Or could have known.

Mr. CARPENTER. In this case the witness and the document prove exactly the same thing—thirty-two miles. I do not know what it is all about. He proves it and the document proves it.

Mr. WILSON. I am very sorry I said anything. I was trying to abbreviate. We got into a long controversy yesterday over a matter that was settled by the records of the department, and I merely made my suggestion that this was settled by the records in order that we might save time. I will never undertake to save any more time in this case, because I always get into trouble when I do.

The COURT. It is an almost invariable experience in court that there is more time spent in objecting to the competency of evidence than there would be in hearing it.

Mr. MERRICK. [To Mr. Wilson.] True repentance consists in sorrow for the past and resolution to do better in the future.

The COURT. If saving time is the question, we had better hear the testimony.

Mr. INGERSOLL. I would rather take more time and hear less incompetent testimony.

Mr. MERRICK. Shall I proceed?

The COURT. Yes.

Q. What is the distance from Greenhorn to Pueblo?—**A.** Thirty-two miles.

Mr. WILSON. That verifies the record.

The COURT. So that there is no harm done.

Q. When did you commence carrying the mail?—**A.** The 18th of August, 1881.

Mr. WILSON. That is long after these parties got out of the department.

The COURT. I do not suppose distances grow or shrink, either.

Mr. TOTTEN. They sometimes change their road. They did that on the Kearney and Kent route.

The COURT. We have got past that point.

Q. How much did you receive for carrying that mail? **A.** Eight hundred and forty dollars.

Mr. INGERSOLL. I object to anything that happened after the new administration came in. I do not wish to be accountable for the new administration.

The COURT. Why do you ask that question?

Mr. TOTTEN. He is nothing but a driver, your honor. He got a dollar a day, I reckon.

Q. How much did you get?

Mr. INGERSOLL. I object.

The COURT. I exclude it.

Mr. MERRICK. I want to know all about the transaction under that contract. It was under that contract that the work was done.

The COURT. It was objected to, and the objection was sustained.

Mr. MERRICK. I will state my reason for asking it.

Mr. INGERSOLL. The court has decided it.

Mr. MERRICK. Very well; then, for the sake of the example, I will not say a word. I hope the other side will pursue a similar course.

Q. How many men and horses did you use in traveling that route?

Mr. INGERSOLL. I object to anything he did under the new administration.

Mr. MERRICK. I presume that the new administration had nothing to do with the number of men and horses necessary to travel over any particular road, either west or east of the Mississippi. The mere fact of its inauguration neither smooths down the mountains, nor raises up the valleys, nor dries up the streams, nor fills up the gullies. If it takes, in 1881, in the absence of any proof of improvements or changes in the road, so many men and horses to go between two given points, the probability is that it took so many men and horses to go between those two points under the preceding administration. Now, I want to prove the number of men and horses required to make that trip. I apprehend that as the termini were not changed, at least as there is no proof of that character, and as the road was not changed, it took the same number of animals and men in 1881 that it did in 1879 or 1880.

Mr. INGERSOLL. I do not think it is a question of probabilities, and I object to anything that happened after the time mentioned by this witness. If the mail was carried there before, they have witnesses to prove it. If it took a certain number of men and animals, they have witnesses to prove it. They might just as well take any other distance and then prove by some man that it was about the same kind of road and that the same number of men and animals were required. I object to trying this case on probabilities.

The COURT. The objection is overruled; you can ask the question.

Q. How many men and animals was it necessary to use to carry that mail from Pueblo to Greenhorn?—A. Two horses and myself.

Q. In what time?—A. Eight hours.

Q. How many were necessary to carry it in seven hours?—A. The same number—two horses and one man.

Q. How would you manage in using those two horses and one man to go over the route from Pueblo to Greenhorn?—A. I started from Greenhorn and drove one horse the round trip, and then took the other one.

Q. You mean to Pueblo and then back to Greenhorn?—A. Yes, sir.

Q. And then you took the other horse and drove him?—A. Yes, sir.

Q. To Pueblo and back?—A. Yes, sir.

Q. Letting the first horse rest during the second trip?—A. Yes, sir.

Q. What time did you leave Greenhorn for Pueblo?—A. Seven o'clock.

Q. What time did you get into Pueblo?—A. I generally got in about two o'clock, sometimes three.

Q. Do you know anything about the running of a railroad on the branch of the Denver and Rio Grande road—anything about the running time on that road; when the trains came in and when they left Pueblo?—A. No, sir.

Q. You do not know anything about it?—A. No, sir.

Q. From whom did you take the contract to run that route?—A. Thomas George.

The COURT. He has not said that he had a contract.

Q. Had you a contract to run that route?—A. Yes, sir; I had a subcontract.

Q. Was it in writing or words?—A. It was in words; I had no writing.

Q. With whom did you make that subcontract?—A. Thomas George.

Q. What had Thomas George to do with it?—A. He got it from Mr. Higgenson.

Q. What had Mr. Higgenson to do with it?

Mr. INGERSOLL. I object to that.

The COURT. I do not think that is important. We just want to know whether he was a contractor or subcontractor.

Mr. BLISS. The fact, as we understand, was this: Miner had been the contractor, and had originally a subcontract with Mr. Ames, which we have proved here. Then Mr. Ames ceased to be the contractor coincident with the increase of trips and the introduction of expedition, and a Mr. Withers became the subcontractor under an arrangement with Mr. Miner. Mr. Withers sublet it around to various persons, as we understand it, as carriers.

Mr. WILSON. Have you introduced any evidence of that kind?

Mr. BLISS. We are bringing it down to the point that this witness was the last carrier who has been doing the service.

The COURT. We will strike out the intermediate indorser.

Mr. BLISS. I am content with that, always providing this witness can show what he has done.

Q. You left Greenhorn at seven o'clock in the morning and arrived at Pueblo at two o'clock, according to the prescribed time?—A. Yes, sir.

CROSS-EXAMINATION.

By Mr. INGERSOLL:

Q. Mr. Parrish, at the time you were carrying this mail route you were carrying it, as I understand, for yourself?—A. Yes, sir.

Q. And you used two horses and yourself?—A. Yes, sir.

Q. For instance, you left Pueblo at 7 o'clock in the morning and went to this place called Greenhorn, did you?—A. Yes, sir.

Q. And then you left Greenhorn the next morning and came back to Pueblo; is that right?—A. I started from Greenhorn in the first place.

Q. You took the other way. You started from Greenhorn at 7 o'clock in the morning and went to Pueblo with one horse?—A. Yes, sir.

Q. Then you got back the next day at 2 o'clock?—A. Yes, sir.

Q. Then the next morning you took the horse that you left?—A. Yes, sir.

Q. Did that horse water and curry and take care of himself while you were gone?—A. No, sir; I had a fellow there to take care of it.

Q. Oh! you had a man there for that purpose?—A. Yes, sir.

Q. That is two men; or don't you count that?

Mr. BLISS. I object.

The COURT. Let them bring that out on their cross-examination. That is a question which the court will have to pass upon.

By Mr. INGERSOLL:

Q. [Continuing.] Consequently there was one man to take care of the horse while you were gone?—A. He had to feed him.

Q. Did he water him?—A. No, sir; it was turned loose in the pasture, and watered itself.

Q. Especially in the winter. Did you turn him loose in the pasture in the winter?—A. Yes, sir.

Q. You turned him out in the winter, did you?—A. Yes, sir.

Q. There was nobody to take care of him, then?—A. I said he fed him.

Q. Fed him while you were gone?—A. Yes, sir.

Q. How many miles did you say it was?—A. Thirty-two.

Q. Do you think that was very much of a day's work for a horse to go; thirty-two miles and back the next day?

Mr. BLISS. I object to what he thinks.

Mr. MERRICK. Let it go.

Q. [Continuing.] Do you think that was very much of a day's work for a horse three times a week?

The WITNESS. The same horse three times a week?

Mr. INGERSOLL. No; the same horse twice a week.

A. No, sir.

Q. That is, to go thirty-two miles and back?—A. No, sir; I did not.

Q. And then he would rest two days, would he not?—A. Yes, sir.

Q. And then go thirty-two miles and back again?—A. Yes, sir.

Q. You do not think that is much work for a horse, or very hard work?—A. No, sir.

Q. Were the roads always good?—A. No, sir; they were sometimes muddy.

Q. Did you go then in seven hours?—A. Sometimes it took eight.

Q. Were they ever so muddy that it took more than eight?—A. No, sir; I do not think I ever—

Q. [Interposing.] Did you ever have any trouble with snow?—A. Yes, sir.

Q. How deep did the snow get on that line?—A. About two feet there at one time.

Q. Do you think it a large day's work for a horse to go thirty-two miles and the snow two feet deep?—A. Yes, sir; it was pretty rough then.

Q. It took you pretty nearly eight hours, then, I suppose?—A. Yes, sir.

Q. How long did that take?—A. About nine or ten hours sometimes.

Q. You say now that you went thirty-two miles with one horse, and the snow two feet deep, in ten hours?—A. The snow never was deep all the way in.

Q. How much of the way was it that deep?—A. About one-third of the way.

Q. About ten miles?—A. Yes, sir.

Q. You say you can go thirty-two miles, and ten miles of it through two feet of snow, in ten hours with a horse?—A. Yes, sir.

Q. What kind of a vehicle did you have for this horse, a buckboard?—A. Had a saddle on him.

Q. Just rode him horseback?—A. Yes, sir.

Q. How much did the mail weigh?—A. I do not suppose it weighed more than four or five pounds.

Q. That is the heaviest mail you ever had?—A. Oh, I have had it heavier than that.

Q. How heavy?—A. I have had it weigh thirty or forty pounds.

Q. Did you ever have a heavy mail when the snow was deep?—A. No, sir.

Q. When did you have your heavy mail?—A. At different times. There never was but one snow there while I carried it.

Q. How long did you carry it?—A. Three months.

Q. You carried it in August, September, October, and November. Did this snow come in the summer?—A. In October.

Q. How was it the balance of the winter?—A. There was not any fall of snow to amount to anything.

Q. How was it last winter?—A. Last winter was when it was that I carried it.

Mr. MERRICK. How many months did you say you carried it?

The WITNESS. Three months.

By Mr. INGERSOLL :

Q. [Continuing.] How many horses did you have during that time?
—A. Two horses.

Q. Did you ever trade in horses?—A. No, sir.

Q. You kept the same horses?—A. Yes, sir.

Q. Are they living now?—A. Yes, sir; the last I heard of them they were.

Q. When did you last hear of them?—A. About a month ago.

Q. They were still living?—A. Yes, sir.

Q. Why did you not keep carrying this mail?—A. I got tired of the job.

Q. Did the horses appear to get tired?—A. No, sir.

Q. They did not mind it. So that you carried it three months, and then quit?—A. Yes, sir.

Q. Do you know who is carrying it now?—A. Yes, sir.

Q. Who is it?—A. John McKendrick.

Q. How long has he been carrying it?—A. About three months, I think.

Q. Ever since you quit?—A. No, sir.

Q. Has he quit, too?—A. No, sir.

Q. Who carried it after you quit?—A. The fellow I got it from; Tom George.

Q. Mr. George carried it?—A. Yes, sir.

Q. How long did he carry it?—A. About a month and a half.

Q. How many horses did he have?—A. He had the same two I did.

Q. You let him have those two?—A. Yes, sir.

Q. And that is all he had?—A. Yes, sir.

Q. Now, what horses did the next man have?—A. He got one of them and had another one himself.

Q. What was the matter with the other one?—A. He had one horse of his own, and did not want but one.

Q. Is the horse still going on the route?—A. Yes, sir. He had been there about two years before I got him.

Q. Had he run on this same route?—A. Yes, sir.

Q. All the way?—A. Yes, sir.

Q. From Greenhorn to Pueblo?—A. Yes, sir.

Q. He was on two years before?—A. Yes, sir.

Q. Do you know whether the route went to Pueblo then?—A. I don't know how far it went.

Q. Do you know whether it went to Pueblo then?—A. No, sir.

Q. Don't you know it did not?—A. No, sir; I don't know how far it went. He was on it, though.

Q. Don't you know as a fact that it did not go to Pueblo at that time?
—A. No, sir; I don't.

Mr. BLISS. When was that ?

Mr. INGERSOLL. Two years before he carried it.

Mr. MERRICK. He says he don't know, but the horse went as far as the route did.

By Mr. INGERSOLL :

Q. [Resuming.] That horse, you say, is out there now ?—A. Yes, sir.

Q. Would you sell that horse ? If you would I want to buy him.

Mr. MERRICK. I object. I do not see what the object of that is except it may be an attempt to make fun out of a serious matter, and counsel have proved our side very conclusively.

Mr. INGERSOLL. It is hard on the horse.

Mr. MERRICK. It isn't hard on the horse at all. It isn't a hard day's work, as this man testified, to go thirty-two miles and then rest, and then the next thirty-two miles, and then rest the two days.

The COURT. It is only a little amusement on the part of the counsel on the other side.

Mr. MERRICK. Well, I object ; this is not a joking matter.

Mr. INGERSOLL. I think it is, and you will find it out before you get through with this case.

Mr. MERRICK. I think you will have more serious matter than you can stand, sir, before you get through with this case.

Mr. INGERSOLL. I think not ; I think not.

The COURT. Well, this is enough of this. The Government will meet with the same fare in this court that the defendants do. Proceed now with the examination.

By Mr. INGERSOLL :

Q. [Resuming.] How long have you been here ?

The WITNESS. In Washington ?

Mr. INGERSOLL. Yes, sir.

A. About a month.

Q. Did you have any trouble with any of these men for whom you carried the mail ?—A. No, sir.

Q. How did you happen to come here ?—A. I was summoned here as a witness.

Q. Who have you talked with about this case since you have been here ?—A. Nobody, to amount to anything. I don't recollect talking with any one about it except the fellows that came with me, because I don't know anybody else.

Q. What kind of a road was this thirty-two miles ?—A. Part of the way it was very good—as far as Saint Charles. It was up hill the balance of the way, and tolerably rough.

Q. Do you go over any part of this road in going from Greenhorn to Salt Creek ?—A. Yes, sir.

Q. How much ?—A. About ten miles.

Q. What kind of a country is it around there ?—A. Around Greenhorn ?

Q. Yes ; is it a rough country ?—A. Yes ; a rough country—foot hills.

Q. [Submitting a paper to witness.] Look at that paper and see if you wrote it ?—A. Yes, sir.

Q. Look at the signature to it and see if it is yours ?—A. Yes, sir ; I think it is.

Mr. INGERSOLL. I find this letter here : " I have been over the road twice from——"

Mr. MERRICK. [Interposing.] I would like to see it, your honor.

The COURT. Let the other counsel see it.

Mr. INGERSOLL. Oh, yes. [Submitting same to counsel.]

Q. [Resuming.] Whilst they are reading it, I will ask you if you did not write a letter in which you stated that that country was the damndest roughest country you ever saw in your life?

The COURT. [To the witness.] You are not bound to answer that. [To Mr. Ingersoll.] You ask him if he wrote the letter. He must say yes in regard to it, I suppose, if that is the letter.

Mr. INGERSOLL. That is the letter.

The COURT. Then you exhibit the letter to him and read it if you choose. But you cannot ask him whether he said so and so in the letter.

Q. [Resuming.] Now, suppose that when this route was first let, it was let on a schedule of sixteen hours, from Greehorn to Pueblo, once a week—that is, to go and return. Could one man and one animal do that?—A. Yes, sir.

Q. Could one man and one animal do it twice a week on a schedule of sixteen hours, starting Monday and coming back Tuesday, and starting Friday and coming back Saturday?—A. Yes, sir.

Q. If an affidavit was made that it would require one man and one animal to carry it twice a week on a schedule of sixteen hours, do you think that that affidavit is true?

Mr. MERRICK. Wait a moment.

The COURT. [To Mr. Ingersoll.] You cannot put that question to him.

By Mr. INGERSOLL:

Q. [Resuming.] Is it a fact, then, that it could have been carried on a schedule of sixteen hours by one man and one horse?

The COURT. Twice a week?

The WITNESS. Do you mean for each trip?

Mr. INGERSOLL. Sixteen hours from Greenhorn to Pueblo, and then he could have sixteen hours to go back?

A. Yes, sir; he could have done it.

Q. Would one man and one animal have been sufficient for that service?—A. Yes, sir.

Mr. BLISS. [Returning letter submitted to him for examination.] We make no objection to the letter.

Q. [Continuing.] How far was it from Greenhorn to Salt Creek?—A. About twenty or twenty-two miles. I don't know the exact distance.

The COURT. What are you going to do with that letter; are you going to offer it?

Mr. INGERSOLL. No, sir; I do not care about offering it.

The COURT. Then, you close your cross-examination?

Mr. INGERSOLL. Yes, sir.

REDIRECT EXAMINATION.

By Mr. MERRICK:

Q. Did you state how much you received for carrying the mail on that route?

Mr. INGERSOLL. I object to what he received. I do not care what he received.

The COURT. The objection is sustained.

Q. [Resuming.] You spoke of Salt Creek. Where is Salt Creek?—

A. It is on the Denver and Rio Grande Railroad.

Q. Is it on this route from Pueblo to Greenhorn?—A. No, sir; they changed the route over there instead of coming to Pueblo.

Q. Is it a pretty bad road to Salt Creek ?—A. There aint any road there at all, the way I had to go.

The COURT. This is about what that letter was.

Mr. MERRICK. Yes, sir; it is about that letter.

The COURT. The letter is not in evidence. You had better not examine him about it.

Mr. MERRICK. I only want to ask one or two questions, as it might come in evidence when this witness is gone.

The COURT. I do not see how it can. As the letter is not in evidence you cannot re-examine in respect of it.

Mr. MERRICK. Well, that is all I have to ask him, sir.

By Mr. DICKSON [the foreman]:

Q. Is there a place on that route called South Pueblo ?—A. Yes, sir.

Q. What is the distance from South Pueblo to Pueblo ?—A. Just across the river, about one hundred yards.

Mr. DICKSON. It is noted here on the map as some distance between the two points.

By Mr. MERRICK:

Q. A hundred yards across the river ?—A. Yes, sir.

Q. And there was a bridge over the river ?—A. Yes, sir.

By Mr. INGERSOLL:

Q. How far is it from Pueblo to South Pueblo ?—A. About a half a mile; a hundred yards, I should have said. It is just across the river.

Q. How many feet are there in a hundred yards ?—A. I do not know.

Q. How many feet in a half a mile ?—A. About three hundred feet in a hundred yards, I guess.

Q. Well, how many make a half a mile ?—A. I don't know.

Mr. INGERSOLL. I guess he drove his horse on the supposition that three hundred feet make a half a mile.

By Mr. MERRICK:

Q. Did you drive your horse on the supposition that three hundred feet make a half a mile ?—A. No, sir.

GEORGE SEARS sworn and examined.

By Mr. BLISS:

Question. Where do you live ?—Answer. I live at Greenhorn, Colorado.

Q. How long have you resided there ?—A. About ten years.

Q. What is your business ?—A. Well, I am postmaster there.

Q. Are you engaged in other business ?—A. Yes, sir.

Q. What is it ?—A. I sell goods at that place, and I am also in the stock business—cattle and sheep.

Q. Have you known the route from Pueblo to Greenhorn ?—A. Yes, sir.

Q. How long have you known it ?—A. I have known it ever since there was one.

Q. How long has that been ?—A. I think it has been carried by the present mode about seven years.

Q. What is the distance from Pueblo to Greenhorn ?—A. Thirty-one miles.

Q. What is the distance from Saint Charles to Greenhorn ?—A. Nineteen miles.

Q. What post-offices were there in 1878 on the route between Greenhorn and Pueblo?—A. Muddy Creek and Saint Charles.

Q. Were the post-offices directly on the road?—A. Not immediately on the road.

Q. How far off?—A. Muddy Creek is about an eighth of a mile from the road, and Saint Charles is probably three-quarters of a mile from the road; that is the way they go.

Q. Did you know a Mr. Ames, who had a subcontract on that route?—A. Yes, sir.

Q. Did you know him when he was performing the service?—A. Yes, sir.

Q. What was the schedule at that time; how much time?

Mr. TOTTEN. That is a matter of record here.

Q. [Continuing.] When was it he was performing the service; do you know?—A. He was performing the service in 1878.

Q. Down to what time; do you know?—A. I don't recollect the date.

Q. Do you remember whether he ever performed service after it was made three trips a week?—A. I think not.

Q. Do you know how many carriers and animals he used?—A. Mr. Ames had two animals. Some of the time he would use one and let the other run out, and then he would change.

Q. Do you mean that he himself drove?—A. Yes, sir.

Q. Do you know what the schedule was in 1878—how much time?

Mr. INGERSOLL. I object to that. The schedule shows for itself.

Mr. BLISS. Wait until I get through the question please, Mr. Ingersoll.

Q. [Resuming.] Do you know how much time he occupied in making the trip in 1878?

Mr. INGERSOLL. I object to that.

The COURT. The objection is overruled.

The WITNESS. Do you mean from Greenhorn to Pueblo?

Mr. BLISS. Yes.

A. Why, he carried it inside of schedule time all the time. He would arrive at Greenhorn all the way from one o'clock to four.

Q. In the afternoon?—A. In the afternoon.

Q. Leaving Pueblo at what time?—A. Six or seven o'clock. He had his own way about that at that time.

Q. And he arrived along there in the middle of the afternoon?—A. Yes, sir.

Q. When he left Greenhorn, what time did he leave?—A. He would leave there sometimes at six o'clock, sometimes at seven, and sometimes at eight o'clock in the morning.

Q. Did you ever go with him?—A. Yes, sir.

Q. What time did he arrive at Pueblo?—A. He would arrive at Pueblo immediately after dinner, and I would get a late dinner sometimes when I would go with him.

Q. What time is dinner there?—A. Twelve o'clock in that country.

Q. Did you know of the performance of the service after Mr. Ames ceased to perform it?—A. I did.

Q. Who took it then?—A. Mr. Withers, I believe, was Mr. Ames's successor in managing the carrying.

Q. Did Mr. Withers himself actually perform the service?—A. I don't know but he did make a trip or two; I am not certain about it.

Q. Then, who after him?—A. I think the first one was a man by the name of McKendrick; I am not positive. There were four or five carriers, and, I think, Mr. McKendrick was the next one.

Q. Four or five carriers at the same time or different times?—A. Oh, no; they had a turn at the mail.

Q. How many men and horses have been used at different times since Mr. Ames ceased to carry the mail on that route; I mean how many at any one time?

The WITNESS. From Pueblo to Greenhorn?

Mr. BLISS. Yes; and back.

A. Two horses and one man.

Q. Have any more ever been used at any time?—A. Not that I know of.

Q. Do you know of a Mr. McDaniel having been carrier at one time?—A. Yes, sir.

Q. Do you know how many he used?—A. He used two. Part of the time Mr. McDaniel only had one he used.

Q. And did he himself drive?—A. No, sir.

Q. He did not himself perform the service, then?—A. No, sir; he did not carry the mail himself.

Q. How many men did he have?—A. One man.

Q. Was that road from Pueblo to Greenhorn an old road or a new road, or what?—A. It was believed to be the oldest road in the country. It was the old stage road that was used in the early days.

Q. From where, to where?—A. From Denver to Santa Fé.

Q. How large a place is Greenhorn?—A. Very small; a little country village.

Q. How many inhabitants has it now?—A. There are about three families there, sir.

Q. What is there surrounding there?—A. A farming and stock country.

Q. Is there any mining done there?—A. Not immediately there.

Q. How near to there is there any mining?—A. There is mining and prospecting within ten or twelve miles of that place.

Q. Are there any mines worked?—A. Not now, that I know of.

Q. Then, if some gentleman describes Greenhorn as an important mining town, is that correct?

Mr. TOTTEN. Nobody has said that.

Mr. BLISS. Why, we had a graphic description, twice repeated by Mr. Wilson, what an important mining town this is; how the miners rushed in there, and the magnificent increase in population, and the necessities of the mail service.

The COURT. What time are you talking about? The mines may have been worked out.

Mr. BLISS. I am going to ask whether there were any mines worked there. I think Mr. Wilson was the only man who worked those mines.

Q. [Resuming.] Are there any mines there that have been worked out, that you know of?—A. No, sir.

Q. Do you know what time in 1879, and since, the mails left Pueblo going east and west?—A. Yes, sir.

Q. When?—A. Since the summer of 1879. The mails left Pueblo at seven o'clock in the morning, and arrived at Greenhorn—

Q. [Interposing.] No, no; I mean leaving Pueblo going east by the railroad?—A. They leave some time between two and three o'clock in the afternoon each day; I do not know the exact time; however, there is a little difference in our time there; the railroad time is faster.

Q. They leave between two and three o'clock, going which way?—A. Going east.

Q. What time going west?—A. About the same time, I think.

CROSS-EXAMINATION.

By Mr. INGERSOLL :

Q. What is your name?—A. George Sears.

Q. How long have you lived at Greenhorn?—A. About ten years.

Q. What business do you say you are in?—A. I am stock growing and selling goods there.

Q. Selling goods to the other two houses?—A. To the farmers, ranchmen, and stockmen of the country generally.

Q. Are there enough people around there to support a store?—A. There have been enough to support two very well.

Q. What were those people engaged in about this place?—A. Engaged in farming and in raising sheep and cattle, principally.

Q. Is it a good farming country for that State?—A. I presume it is probably as good as any there is in the southern part of the State.

Q. Is there a good deal of stock raised there?—A. There has been a good deal of stock raised there.

Q. Sheep and cattle?—A. Yes, sir; and horses.

Q. How far is it to the mines where they were prospecting or working?—A. I do not know of any mines that are being worked or prospected any nearer than about eighteen miles.

Q. Did you keep the post-office?—A. Yes, sir.

Q. Did you ever sign any petitions for increase of service?—A. I think I did.

Q. [Submitting a paper to witness.] Is that your name. [Indicating.]—A. Yes, sir.

Q. You signed that petition?—A. I did.

Mr. INGERSOLL. Has that petition any mark upon it to designate it?

Mr. WILSON. Yes, sir.

Mr. INGERSOLL. What is the mark upon it?

Mr. WILSON. It is 13 B.

Q. [Submitting another paper to witness.] See if you signed that petition. It is the petition coming from the Greenhorn post-office apparently?—A. Yes, sir; I signed it.

Q. Are the facts set forth in that petition true, as you understood it?

The WITNESS. I did not read it.

Mr. MERRICK. [Submitting 13 B to witness.] There it is. Read it, and see what it does say.

A. [After reading the paper.] I signed this petition, but I do not recollect of its asking for quicker time.

By Mr. INGERSOLL :

Q. [Resuming.] Does that ask for quicker time?—A. "On quicker time."

Q. Read the last section and see what that asks for.—A. It asks for a time—I can explain that by a little talk.

Q. I will ask you anything I want to ascertain about it. I ask you first if you signed it?—A. I did.

Q. Did you know what was in it when you signed it?—A. I did; I thought I did.

Q. Did you sign it for the purpose of influencing the action of the Second Assistant Postmaster-General, as an officer of the Post-Office Department?—A. I certainly did.

Q. Now you signed another about like that, did you not?

Mr. MERRICK. Has he a right to make any explanation, your honor?

The COURT. When the other paper is presented you can ask him about it.

Mr. INGERSOLL. Where is the other paper he signed. Just hand it to him. Of course I have no objection to his making any explanation he desires.

Mr. MERRICK. [To the witness.] What did you want to say ?

The WITNESS. I would like to make an explanation in regard to this.

Mr. INGERSOLL. Go on and make it.

The WITNESS. The last few lines written here were written for a purpose, at the request of the farmers there. I recollect the writing of this petition very well, and the mail as carried and as arriving, prior to this time and during the time of the circulating of the petition. It did not come in there regularly, and the farmers that would come to that place for mail would sometimes have to wait later than they wished.

Q. How late would they have to wait ?—A. They would have to wait until four o'clock and sometimes till five. At other times it would get there earlier in the day. They wanted the mails to arrive at a certain time which they considered could be done easy enough. So this was done for that purpose.

Q. Did they want it to arrive sooner or later ?—A. They wanted it to arrive at about two o'clock.

Q. Would that be sooner or later ?—A. That would be sooner than it came sometimes.

Q. Was that the reason they asked to have it expedited ; so as to have it get there sooner ?—A. That is the reason why we say here, "To carry it in eight hours, and have a certain time of arrival."

Q. That is the way they wanted it ?—A. Yes, sir.

Q. Now, it was not brought soon enough the way it was ?—A. It was brought sooner sometimes.

Q. Yes, but as a rule it was not ?—A. No, sir ; not as a rule. The carrier would be late sometimes. He had his own way about coming.

Q. What was his time ; how much did he have the right to take ?—A. He claimed it as the schedule allowed him—more than they liked.

Q. How much ?—A. Sixteen or seventeen hours, I believe.

Q. And you signed two petitions like that, did you not ?—A. I think so.

Q. Were you present when it was written ?

Mr. CARPENTER. He says he wrote that.

Mr. INGERSOLL. No ; I don't think he does.

Mr. CARPENTER. [To the Witness.] Did you not say you wrote it ?

Mr. INGERSOLL. He was present when it was written.

The WITNESS. The farmers requested it long before the petition was written. They had found a great deal of fault about the mail coming in so irregularly.

Q. About its coming so late sometimes ?—A. Yes, sir.

Q. Did it ever come after schedule time ?—A. Not when it came at all.

Q. Then they wanted the schedule shortened ?—A. They wanted the schedule shortened ; yes, sir.

Q. And that is the reason you made that petition ?—A. Yes, sir ; they wanted the schedule arranged so as to force the carrier to come in, and not lay over on the way.

Q. In other words, they wanted the mail to get there sooner ?—A. Yes, sir.

Q. So you signed two petitions to that effect ?—A. I did.

Mr. INGERSOLL. Eight hours they ask in this petition.

Mr. MERRICK. And it was expedited to seven hours.

Q. [Continuing.] Now, the old schedule was sixteen hours, and you asked to have it reduced to one-half in this petition, did you?—A. Asked to have it carried in eight hours.

Q. That is reducing it one-half?—A. Yes, sir.

Q. Who do you say complained about it—the farmers?—A. The farmers, generally.

Q. Were they the ones who made the most fuss?—A. They were the ones who made the most fuss about it; yes, sir.

Q. Did they take some interest in getting up this petition?—A. They did, indeed.

Q. Was it gotten up really by them?—A. Well, it was a petition gotten up for the community in general.

Q. Did the community in general get it up?—A. They did.

Q. It started there, did it?—A. Yes, sir.

Q. Were there any mines around Greenhorn in 1879?—A. No, sir; not that I know of.

Q. Or 1878?—A. No, sir; it is not a mining country.

Q. Were there any prospectors there at that time?—A. None at work.

Q. Were there any there?—A. There was a man working for me that was there.

Q. But there was no general prospecting?—A. No, sir.

Q. Now, according to your account, it is thirty-three and a half miles from Greenhorn to Pueblo?—A. No, sir.

Q. How far?—A. About thirty-two, the way the mail was carried.

Q. I thought you said thirty-one, first?—A. I did.

Q. Then you said there was some place three-quarters of a mile off the road?—A. Yes, sir.

Q. Would that make a mile and a half?—A. They would leave the road at right angles, and they would cross the stream; and the post-office is somewhere between a half and three-quarters of a mile above the main road, on the same stream.

Q. They had to travel at least thirty-two miles from Greenhorn to Pueblo?—A. I thought so; yes, sir.

Q. Why did you say it was thirty-one miles?—A. Because it is, by the main road.

Q. But did they go that way?—A. People that don't carry the mail—

Q. [Interposing.] But we are speaking about the people who carry the mails. How far would they have to go?—A. They would have to go out of their way about an eighth of a mile at Muddy Creek, and probably three-quarters of a mile at Saint Charles.

Q. That would make thirty-one miles and seven-eighths?—A. I presume so.

Q. Now, you live in Greenhorn?—A. Yes, sir.

Q. Do you know what time Mr. Ames started from there in the morning with the mail?—A. I have been with him, and I knew when I was with him.

Q. How many times were you with him?—A. Oh, I have been with Mr. Ames quite a good many times. I ride into town with the mail-carrier quite often.

Q. How large a place is Pueblo?—A. I believe the present population of Pueblo—of the two towns—is about twenty-three thousand.

Q. How large a place was it in 1878?—A. About twelve or fourteen

thousand. I am not certain about that. I ought to know, but I don't remember now.

Q. Are you certain about that?

The WITNESS. About what?

Mr. INGERSOLL. About the size of the town in 1878—four years ago—

A. No, sir.

Q. It is now about twenty-three thousand?—A. It is reported so.

Q. Are there any mines about there?—A. No, sir.

Q. Any smelting works there?—A. Yes, sir.

Q. But there are no mines there?—A. Not immediately there.

Q. How near?—A. I believe Rosita, a distance of forty or fifty miles from there, is the nearest mining camp.

Q. Did this Mr. Withers, of whom you spoke, have a livery stable?

—A. He had a feed stable, I think—probably a livery stable.

Q. He carried this mail for awhile?—A. He was managing the carrying of it.

Q. For the subcontractors?—A. Yes, sir; that is, I speak from hearsay. I am not certain about that.

Mr. INGERSOLL. That is all I want to ask you.

Mr. WILSON. I want to ask him a question or two.

Mr. MERRICK. I object. I would be very glad to accomodate Mr. Wilson, in anything, but personal regard cannot break down a fixed rule.

Mr. INGERSOLL. Then I will ask him.

Q. [Resuming.] How far is Greenhorn from Fort Garland?—A. I think it is ninety miles.

Q. How far is it from what they call Muskey Pass?—A. About forty-five miles.

Q. How far from Rosita?—A. There are two ways to go to Rosita, and in either case you would have to go around the mountain, or very near around the mountain—entirely around the mountain south, and north over the foot hills.

Q. How far do you say it is from Greenhorn to Rosita?—A. The nearest way would be about forty-two or forty-three miles. I think that is the nearest way by road. It is not far across the mountain.

Q. How far would it be across the mountain?—A. Well, this is guess work with me.

Q. Give your best guess?—A. I should judge nineteen or twenty miles.

Q. Was Rosita an important mining camp and point in 1878?—A. It was quite a camp at that time, I think.

Q. When was the railroad built to Rosita?—A. Some time last year—1881.

Q. There has been a railroad finished there, has there?—A. No, sir; it is to Silver Cliff, I think the railroad runs, but not to Rosita.

Q. To Silver Cliff or West Cliff?—A. To Silver Cliff.

Q. How far was that from Rosita?—A. About five miles.

Q. How far was Greenhorn from Sand Hill Pass?—A. I don't know any pass by that name.

Q. How far from Silver Park?—A. I don't know, sir.

Q. Do you know whether that is an important mining camp?—A. It is spoken of as a camp. I don't know much about it.

The COURT. Is it the object of this cross-examination to find out whether Greenhorn is in a populous neighborhood or not?

Mr. INGERSOLL. No, sir; the object is to find out whether at that

time, 1878, there was a great deal of emigration into that country in that neighborhood.

The COURT. It seems that you are getting out of the neighborhood.

Mr. INGERSOLL. I am trying to prove that the petition that this gentleman signed was a fact. That is all.

The COURT. That is proved.

Mr. INGERSOLL. And that we had the right to act upon it.

The COURT. He has proved that it was got up there amongst the farmers and settlers.

Mr. WILSON. I want to prove that the country was full of persons who were prospecting for mines.

The COURT. Ask him that question.

Mr. WILSON. I am not permitted to ask him the question, your honor.

Mr. TOTTEN. We can get along faster if we can all of us put questions.

The COURT. I am afraid to permit it.

By Mr. INGERSOLL :

Q. [Resuming.] Upon which side of the Christo range is Greenhorn ?

—A. It is this side of all those ranges.

Q. That is, it is east of them ?—A. Yes, sir.

By Mr. MERRICK :

Q. How high is that mountain between Rosita and Greenhorn ?—A. Above timber line.

Q. How many feet is that, do you suppose ?—A. About eleven thousand feet.

By Mr. WILSON :

Q. Are not both Rosita and Greenhorn on the same side of the range ?

—A. No, sir.

Q. You say it is across the mountain, between Rosita and Greenhorn ?—A. Rosita is just over the mountain, near the top of the mountain. It is a mining camp.

Q. It is on the same side of the range, too, is it not ?—A. It is west.

Q. Are they not building a railroad right up to it ?—A. Not from that side.

Q. It is about nineteen miles to Greenhorn, is it not ?

Mr. MERRICK. I object.

The COURT. Mr. Wilson, that will do. [To Mr. Bliss.] Have you anything in the way of re-examination.

REDIRECT EXAMINATION.

By Mr. BLISS :

Q. Did Rosita and the people in that region get their mail matter from Greenhorn ?—A. No, sir ; there is an office between Greenhorn and Rosita.

Q. Did the people at Fort Garland ever get their mail matter there ?—A. Not that I know of.

Q. In communicating between Pueblo and Rosita, do people pass by Greenhorn ?—A. There is a way that they can go, but it is much the farthest way.

Q. There is a direct way, is there not ?—A. There is a way around the mountains that is direct to Rosita, but a long ways around.

Q. You said that the nearest mines that you knew of were about sixteen miles off. Where are those?—A. They are in the direction of Rosita from Greenhorn.

Q. After 1878, did those miners get their mail at Greenhorn, or at Rosita, or somewhere else?—A. No, sir.

Q. Where did they get it?—A. In 1878 and 1879 there were no miners there. Since then there has been an office established nearer to those miners than Greenhorn.

Q. On what route?—A. It is a special route from Greenhorn to Rye.

Q. How much mail goes over that route now?—A. Oh, I don't know that. It is not a large office. It is now a special office without expense to the Government.

Q. Was the mail from Pueblo to Greenhorn, after 1878, ever run so as to take sixteen hours in going?—A. No, sir; not that I know of.

Mr. WILSON. I object to that.

Mr. BLISS. Why?

Mr. WILSON. Simply because the contract authorized the contractor to carry it in sixteen hours. If it took less time than that it was all right. He could not take any more time without being reported, but he had a right to take as much less time as he wanted to.

The COURT. I will admit the question.

Mr. INGERSOLL. He was liable to be reported for going in quicker time. It was contrary to the rule to go in quicker time, because every man had a right to suppose that the mail would pass the office at a certain time, and consequently governed himself about putting mail there.

Mr. BLISS. I suggest that your testimony be postponed until we get through.

The COURT. Something was said by the witness awhile ago about a mail-carrier lying over on the side of the road in order to enable him—

Mr. BLISS. [Interposing.] I am coming to that.

Mr. MERRICK. He could not go any slower than a horse could walk, and so he had to lay by.

Q. What did you mean by "his sometimes laying over"?—A. I spoke of that in connection with what the farmers said about slow mail. He would feed on the way, and get in late, and they thought he neglected his duty.

Q. You mean by laying over, that he fed on the way?—A. Yes, sir. They would say that he—

Mr. INGERSOLL. [Interposing.] I don't care what they would say; I object to it.

Mr. MERRICK. It was brought out by them.

Mr. INGERSOLL. No, sir; I simply brought it out to show that they got up a petition.

The COURT. This is some more neighbor's talk from the other side.

Mr. BLISS. [To the witness.] Go on.

A. They would say—I am telling as to what others have said—that he could lay over half a day along the road, and then get in on that schedule.

Q. Did he ever do it?—A. I think not; not half a day.

Q. Did he usually get there by daylight on the old schedule?—A. Yes, sir; I think always.

Q. You said you did not remember in that petition the words "quicker time;" what do you mean by that?—A. I don't recollect of seeing them at that time.

Q. How much mail matter in 1878 and 1879 originated at Greenhorn and vicinity?

Mr. INGERSOLL. I object to that. It is not re-examination. I called out nothing about it.

Mr. BLISS. I do not press it. I do not care for it.

Mr. MERRICK. We will call him again to-morrow morning.

By Mr. INGERSOLL:

Q. Was there a line of mail from Greenhorn to Beulah?—A. Yes, sir; I did not say so, but there was.

Q. How often a week?—A. Three times a week.

Q. How far is it?—A. From Greenhorn to Beulah is about seventeen or eighteen miles; but that route was from Greenhorn to Florence.

Q. How far is Florence?—A. It is called all the way from forty-four to forty-five and fifty miles by different people.

By Mr. BLISS:

Q. Florence is on the branch of the Denver and Rio Grande Railroad, is it not?—A. Yes, sir.

Q. West of Pueblo?—A. Yes, sir.

Q. Do you know how far west of Pueblo?—A. I don't know the distance by the railroad.

Q. Is it five miles or fifty?—A. I never have been there, and don't recollect hearing the distance mentioned.

Q. What is the population of Beulah?—A. Beulah itself is the name of a post-office there. That is about all there is of it. There are farmers living through the country.

Q. How much mail is there between Beulah and Greenhorn?

Mr. INGERSOLL. I object.

The COURT. I do not see what that has to do with the case.

Mr. BLISS. I do not; and I do not know what they opened the question for unless they meant to imply that there is considerable mail there.

By the FOREMAN [Mr. Dickson]:

Q. You were shown a petition marked 13 B, on which appear the words, "on quicker time." You identified your signature. Who wrote the body of the petition?—A. Well, I should simply guess on that question.

Q. You do not know positively?—A. I might not be positive about it, but I think I could tell pretty well who wrote it. [Again examining the petition.] I think C. L. McPherson wrote this petition.

Q. Is his signature there?—A. No, sir; I think not.

By Mr. INGERSOLL:

Q. You do not think Mr. McPherson wrote it?—A. I did not say so.

Q. What did you say?—A. I said I thought he did.

Q. But he did not sign it?—A. I said that his signature was not there.

Q. Do you know his handwriting?—A. I think I do; yes, sir.

Q. Did you ever see him write?—A. Yes, sir.

Q. Will you look at the words, "quicker time," and say whose writing you think they are?—A. I can simply say what I think about it. I do not think it is the same handwriting and I don't think it was there when I signed the petition.

Q. You think the last section was written by the same man?—A. Yes, sir.

Q. Will you state what are the differences between the words "quicker time" and the other writing which you think is his?—A. I am not an expert.

The COURT. That is not a proper question. We want his statement of facts. We do not want his opinion.

Mr. INGERSOLL. I would like to have him state the difference because it was manifestly written by the same person.

Mr. MERRICK. It was manifestly written by two different persons.

Mr. INGERSOLL. No, sir.

The COURT. It is a fair matter for the jury to pass upon.

Mr. MERRICK. He says that the body of the petition was written by Mr. McPherson, and the words "quicker time" were not.

Q. You say that "in quicker time" was not written by the same person?—A. I said I did not believe it was there when I signed the petition.

Q. Do you recollect whether it was there, or not?—A. I don't recollect that it was or was not, positively; but I don't think it was.

Q. Have you any recollection on the subject?—A. I usually read a petition before signing it, and I don't believe that was in it.

Q. Was this last part in it?

We respectfully request and urge that the running time be reduced so as to run from Pueblo to Greenhorn in eight hours.

A. Yes, sir; it was.

Q. You recollect that?—A. I recollect that I read it.

Q. "So that the citizens along the route may get their mail at a seasonable hour"?—A. Yes, sir; that was there.

Q. Now, will you tell the jury what, in your judgment, could have been in any human being's mind to cause them to put in the words "in quicker time" after they had written this?

Mr. MERRICK. Don't answer. I think we can give the reason on the face of the petition.

The COURT. The witness is not bound to give his judgment about it. He is testifying to facts.

Mr. INGERSOLL. I will leave the matter to the jury, and let them judge.

The COURT. Then there is no use to inquire.

Mr. MERRICK. Not a bit. Let the jury take it on the face of the paper, and say whether, in their opinion, it is written by the same person or not.

Mr. INGERSOLL. If it is not written by the same man I will agree never to write another word while I live.

Mr. MERRICK. If it is written by the same man he must have had paralysis at one time, and not at another.

Mr. TOTTEN. I say it was written by the same pen and at the same time.

Mr. MERRICK. I must say I do not believe you think so.

JAHZEEL S. PIPER, sworn and examined.

By Mr. BLISS:

Question. Where do you reside?—Answer. Pueblo.

Q. Where did you reside in 1879-'80?—A. I lived at Agate post-office, so called.

Q. When did you cease to live at Agate?—A. Last June.

Q. You once filled the laborious office of postmaster at Agate, did you not?—A. I did, sir.

Q. When were you appointed ?—A. April 7, 1880.

Q. How long did you continue as postmaster ?—A. About thirteen months.

Q. During that time was any mail ever brought to the Agate post-office by the carrier on route 38135 from Pueblo to Greenhorn ?—A. There was none ever left there, sir.

Q. Did the carrier ever come there ?—A. Yes, sir.

Q. How many times ?—A. Once.

Q. When was that ?—A. It was the latter part of November, 1880.

Q. Did he leave any mail ?—A. He did not.

Q. You never had any mail left there on that route ?—A. Never did.

Q. [Submitting a paper to the witness.] Please look at this paper and see if you recognize it.—A. Yes, sir.

Q. Does that paper bear your signature ?—A. It does, sir.

Mr. BLISS. It is a paper from the inspection division.

Q. Did you forward it to any place ?—A. I forwarded it to Washington.

Q. To what office ?—I really can't tell you.

Q. Was it to the Post-Office Department ?—A. I don't recollect the particular office to which I forwarded it.

Q. I see it is sworn to. Did you forward it at about the time it is dated ?—A. Yes, sir ; as soon after as I could get it in the post-office.

Q. I now hand you another paper [doing so], and ask you if that is your signature ?—A. That is my signature.

Q. Did you forward that to any place ?—A. Yes, sir.

Q. To where ?—A. To where it was directed, with the other paper.

Q. How far is Agate off the line of the mail route from Pueblo to Greenhorn ?—A. At right angles from the route ; it is about a mile and a half I should judge.

Q. If the carrier had been coming from Pueblo and wanted to go to Greenhorn by the Agate post-office, how much additional distance would he travel over than he would if he went direct without going to Agate ?

The WITNESS. If he went around by Agate ?

Mr. BLISS. Yes.

A. Three miles ; that is, the way we talk. I never measured it, but that is my best judgment.

Q. How much of a place is Agate ?—A. Oh, it is no place at all, only three or four houses. There are farmers around. There were about sixty people there at that time.

Q. Any mines there ?—A. No.

Q. That is not a mining region ?—A. No, sir.

Mr. BLISS. I offer these papers in evidence as showing notice that there was no performance of service to that office in connection with the order allowing a month's extra pay when they discontinued it subsequent to this time, the contract giving the Postmaster-General the right to terminate the contract whenever they failed to obey an order. The first paper is as follows :

TRANSCRIPT FOR FOURTH-CLASS OFFICES.

Account of box-rents collected, and daily transcript of amount of postage stamps, stamped envelopes, postal cards, and newspaper and periodical stamps canceled as postages on matter actually mailed, and of postage-due stamps canceled in payment of undercharged and unpaid postage upon letters delivered at the post-office at Agate, county of Pueblo, and State of Colorado, during the quarter ending Dec. 31, 1880.

This transcript forms a part of the quarterly return, and must, in all cases, be inclosed in, and transmitted to the auditor with, the quarterly account-current.

transcript of amount of postage stamps, stamped envelopes, postal cards, and
 1 periodical stamps canceled as postages on matter actually mailed, and of postage
 stamps canceled in payment of undercharges and unpaid postages upon matter deliv-
 ering the quarter.

Month.	Day.	Amount.		Month.	Day.	Amount.		Month.	Day.	Amount
		Dolls.	Cts.			Dolls.	Cts.			Dolls.
.....	1	.....	.....	.....	1	.....	.....	.....	1	.....
.....	2	.....	.....	.....	2	.....	.....	.....	2	.....
.....	3	.....	.....	.....	3	.....	.....	.....	3	.....
.....	4	.....	.....	.....	4	.....	.....	.....	4	.....
.....	5	.....	.....	.....	5	.....	.....	.....	5	.....
.....	6	.....	.....	.....	6	.....	.....	.....	6	.....
.....	7	.....	.....	.....	7	.....	.....	.....	7	.....
.....	8	.....	.....	.....	8	.....	.....	.....	8	.....
.....	9	.....	.....	.....	9	.....	.....	.....	9	.....
.....	10	.....	.....	.....	10	.....	.....	.....	10	.....
.....	11	.....	.....	.....	11	.....	.....	.....	11	.....
.....	12	.....	.....	.....	12	.....	.....	.....	12	.....
.....	13	.....	.....	.....	13	.....	.....	.....	13	.....
.....	14	.....	.....	.....	14	.....	.....	.....	14	.....
.....	15	.....	.....	.....	15	.....	.....	.....	15	.....
.....	16	.....	.....	.....	16	.....	.....	.....	16	.....
.....	17	.....	.....	.....	17	.....	.....	.....	17	.....
.....	18	.....	.....	.....	18	.....	.....	.....	18	.....
.....	19	.....	.....	.....	19	.....	.....	.....	19	.....
.....	20	.....	.....	.....	20	.....	.....	.....	20	.....
.....	21	.....	.....	.....	21	.....	.....	.....	21	.....
.....	22	.....	.....	.....	22	.....	.....	.....	22	.....
.....	23	.....	.....	.....	23	.....	.....	.....	23	.....
.....	24	.....	.....	.....	24	.....	.....	.....	24	.....
.....	25	.....	.....	.....	25	.....	.....	.....	25	.....
.....	26	.....	.....	.....	26	.....	.....	.....	26	.....
.....	27	.....	.....	.....	27	.....	.....	.....	27	.....
.....	28	.....	.....	.....	28	.....	.....	.....	28	.....
.....	29	.....	.....	.....	29	.....	.....	.....	29	.....
.....	30	.....	.....	.....	30	.....	.....	.....	30	.....
				.....	31	.....	.....	.....	31	.....

BOX-RENT ACCOUNT.

Quarterly account of all receipts for rent of boxes and drawers for the quarter ending——, 18 .

	Number of boxes rented.	Rate.	Dollars.	Cents.
Rent of boxes				
Rent of drawers				
Total to be carried to articles 2 and 8 of the account-current	\$			

POST-OFFICE At AGATE,
County of Pueblo, State of Colorado :

I hereby certify, on my official oath as postmaster, that the above and within transcript is a true statement from the records of this office.

J. S. PIPER,
Postmaster.

No service at this office.

(Indorsed :) 38 B. Class 4. Post-office at Agate, State of Colo. From Oct. 1, 1880, to Dec. 31, 1880. Transcript. To be transmitted to the auditor with the quarterly account-current.

Q. In whose handwriting is the indorsement ?—A. Mine.

Q. You put that on before you forwarded it ?—A. Yes, sir.

[The paper in question was marked 37 B by the clerk.]

Mr. BLISS. The other paper is as follows :

DR.

[illegible]

Amount of article 1.....
Amount of canceled stamps as per transcript.....
Total

Postmasters will take credit under article 8 for commissions on the above amount as follows:

On the first \$100 or less.....	60 per cent.
On the next \$200 or less.....	50 per cent.
On the excess above \$300.....	40 per cent.

The amount of compensation is limited to \$250 per quarter.

Postmasters will be required to report the entire amount of box-rents collected quarterly. A failure to do so will be considered cause for removal.

CR.

	Column for postmaster.	Column for auditor.
7. By commissions on aggregate amount of article 1 and canceled stamps, as follows:		
On \$....., at 60 per cent.....		
On \$....., at 50 per cent.....		
On \$....., at 40 per cent.....		
By whole amount of box-rents charged in article 2.....		
Total compensation.....		
9. By..... ship and steamboat letters paid for this quarter, as per receipts herewith, at two cents each.....		
10. By expenses per vouchers herewith.....		
11. Balance due the United States.....		

I, J. S. Piper, postmaster of Agate, Pueblo County, Colo., do swear that the accounts which I have rendered to the Post-Office Department for the quarter ending December 31st, 1880, exhibit truly and faithfully the entire receipts of my post office which have been collected thereat, and the entire sum which could have been, by due diligence, collected thereat, during the period above stated, and that the credits claimed in the said accounts are just and true, as I verily believe; and, furthermore, that during the said period I have not knowingly delivered, or permitted to be delivered, to any person any mail matter on which the postage had not been paid at the time of such delivery, by affixing and canceling postage-due stamps, in accordance with section 26, act of March 3, 1879, and of sections 270-274, Postal Laws and Regulations, edition of 1879. And, furthermore, that the amount of postage-stamps, stamped envelopes, postal-cards, newspaper and periodical stamps canceled as postages on matter actually mailed during the quarter, and of postage-due stamps canceled in payment of undercharged and unpaid postages upon matter delivered during the quarter, upon which commission is claimed, is truly and accurately stated in the transcript accompanying this account.

J. S. PIPER,
Postmaster.

Sworn and subscribed before the undersigned, a justice of the peace for the county of Pueblo, this third day of Jan., A. D. 1880.

HAMMOND POLLARD, J. P.

(Indorsed :) Act March 3, 1879. Class 4. Post-office at Agate. State of Colorado. From Oct. 1st, to Dec. 31, 1880. J. S. Piper, postmaster. No service at this office.

[The paper last read was marked by the clerk 38 B.]

The COURT. It is all blank, is it ?

Mr. BLISS. Yes ; but Mr. Wilson insisted on my reading it all.

Mr. WILSON. If your honor please, Colonel Bliss has been reading in this dramatic way for the purpose of impressing the jury. I want him to read it because I want it to appear that immediately upon the department knowing that that office was in the condition in which it was they cut it off.

Mr. MERRICK. They paid for the service not rendered and a month's extra pay besides.

The COURT. [To Mr. Wilson.] I did not know the reading was going on at your request.

Mr. WILSON. Colonel Bliss took so much satisfaction in reading the other papers that I want him to have a little more satisfaction by reading this.

Mr. BLISS. Your honor, I confess that I am human, and I do like occasionally to stir the other side up.

Mr. WILSON. You do not stir us up.

Q. Are the statements in those two papers true ?—A. Yes, sir.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. When was the office at Agate established ?—A. The 8th day of April, 1880.

Q. When were you made postmaster ?—A. April 7, 1880.

Q. Do you know how it came to be established ?—A. On a petition from the people.

Q. The people of that community petitioned to have a post-office established at Agate ?—A. They did, sir.

Q. And the Post-Office Department established the post-office there according to their request ?—A. Yes, sir.

Q. Then, after having established the post-office they put the service—

Mr. INGERSOLL. [Interposing.] There was not any service.

Q. After they established the post-office when did they put the service on ?—A. They did not put it on at all.

Q. They never put it on ?—A. No, sir.

Q. What was the reason that they did not put it on ?—A. You will have to ask somebody else ; I cannot tell you.

Q. Service was ordered to Agate ?—A. It was.

Q. Do you know when ?—A. I had a notice served on me that the mail would be supplied at Agate the 1st of December, 1880.

Q. Who was the mail carrier at that time ?—A. I cannot recall his name ; Mac something.

Q. Call him Mac for short ; Mac did not come there but once ?—A. He came there once.

Q. And you reported to the department that there was no mail coming there, did you ?—A. I did, sir.

Q. You were instructed to make your reports at the end of every month, were you ?—A. Every quarter.

Q. Just as soon as you made your report, the Post-Office Department stopped this Agate business, did they not ?—A. I made my report the 31st of December, and asked for the discontinuance of the office.

Q. And it was discontinued, was it not ? The records will show when it was.—A. I will take that back. I did not ask a discontinuance by that

report. I asked for a discontinuance at the end of the report in March, and they discontinued it in April.

Q. They discontinued it as soon as they found out the condition of things, did they?—A. Well, sir, I reported each quarter, no service. I don't know whether they ever got it or not.

By the COURT:

Q. How long were you postmaster?—A. Thirteen months' or thereabouts.

Mr. WILSON. They discontinued it and there was one month's extra pay allowed to the contractor.

Mr. BLISS. They paid for a month's service when no service was ever performed, and did not recoup it.

[The witness left the stand.]

Mr. BLISS. I put in the formal order annexing this post-office to this route. There is a distinction between the fact whether the office was on this route and whether it remained as a post-office. It might have been on another route.

[The witness was recalled to the stand at the request of the counsel for the defense.]

Mr. WILSON. Allow me one word, as I hardly ever talk any. On the 10th of November, 1880, the Postmaster-General ordered that service on route 38135 from Pueblo to Greenhorn——

Mr. BLISS. [Interposing.] What are you reading?

Mr. INGERSOLL. He is reading the same thing.

Mr. BLISS. You are reading a paper not in evidence.

Mr. WILSON. Am I? Look and see.

Mr. BLISS. I object to your reading it. It is not marked in evidence.

Mr. MERRICK. I should like to know what is before the court, if the counsel will allow me.

The COURT. A motion to adjourn.

Mr. MERRICK. I hope your honor will act upon the motion.

Mr. INGERSOLL. We want Mr. Piper here in the morning.

Mr. WILSON. I am trying to get this matter straight, so there will be no confusion about it. On the 10th of November, 1880——

Mr. BLISS. [Interposing.] I object to Mr. Wilson's reading from a paper not in evidence, and which he declined to show.

Mr. WILSON. Give me the orders.

Mr. BLISS. Here they are [handing papers to Mr. Wilson].

By Mr. WILSON:

Q. How long have you been here?—A. I have been here between five and six weeks.

Q. How many times have you come?—A. Twice; this is the second time.

Q. How long were you here the first time?—A. Eight days.

Q. What is the distance from here to Pueblo?

Mr. MERRICK. I object. What has that got to do with this case, your honor?

The COURT. Nothing at all.

Q. Did you petition to establish a post-office at Agate?—A. I did, sir.

Q. Do you know where the petition is?—A. I do not.

Q. Was it forwarded to the Post-Office Department?—A. Yes, sir.

Mr. WILSON. I would like to have that petition, your honor.

Mr. BLISS. You will find it in the office of the First Assistant, with which we have nothing to do. It properly belongs there, and not in

the Second Assistant's office. At the same time, if you will remind me of it, I will endeavor to have it brought in by some clerk in the office, or if you will write to the First Assistant I will see that the paper is brought in.

Mr. WILSON. We give notice now that we want that paper.

Mr. MERRICK. Give us written notice.

Mr. WILSON. No, we will not.

Mr. MERRICK. Then I won't bring it in.

The COURT. What do you want?

Mr. WILSON. The petition signed by this witness, upon which the post-office at Agate was established.

Mr. BLISS. We are not raising any question about that.

The COURT. What figure does this post-office make in the matter?

Mr. WILSON. They established a post-office there upon a petition of the citizens to the department. They made their contract with the carrier for it, and when they found there was no service it was discontinued; and now, because a month's extra pay is allowed——

The COURT. [Interposing.] We are dealing now with the service, and not with the post-office.

Mr. WILSON. Certainly; but I want to show that that post-office was established there in consequence of a petition of the people.

Mr. BLISS. We will admit that.

Mr. WILSON. The record shows that as soon as the department knew no service was done it was discontinued.

The COURT. You have that in proof now.

Mr. WILSON. Yes; but I want the petition.

The COURT. Why?

Mr. WILSON. Because I want to show that my client was acting upon papers that were authentic in doing what he did.

The COURT. Your client is not charged with the responsibility of establishing that post-office.

Mr. TOTTEN. Certainly he is.

The COURT. No.

Mr. THOMAS J. BRADY. No.

Mr. WILSON. He is charged with having paid this carrier a month's extra pay. That is what he is charged with. I say that when the post-office is established it is a duty to put service on for that office.

The COURT. The Second Assistant Postmaster-General had nothing to do with establishing the post-office. That is the business of the First Assistant.

Mr. WILSON. I know that, if your honor please.

The COURT. He is not in this indictment.

Mr. WILSON. The First Assistant establishes the post-offices, but it is the duty of the Second Assistant to put the service on.

The COURT. They have proved that.

Mr. WILSON. Certainly; that having entered into his duty under the law, when he found that the service was not needed there he lopped it off, and the contractor became entitled to a month's extra pay.

The COURT. That is provided for by the law. The paper you call for seems to have nothing to do with the case.

Mr. TOTTEN. We have a right to show it to the witness to ask him why he signed it.

At this point (at 3 o'clock and 20 minutes p. m.) the court adjourned until to-morrow morning at 10 o'clock.

FRIDAY, JUNE 16, 1882.

The court met at 10 o'clock and 5 minutes a. m.

Present, counsel for the Government and for the defendants.

JAMES M. BORDEN sworn and examined.

By Mr. BLISS:

Question. What is your business?—Answer. I am a draftsman in the topographer's branch of the Post-Office Department.

Q. [Submitting map.] Please look at that map, purporting to be a map of route 38135, from Saint Charles to Greenhorn, and state whether or not you prepared it.—A. Yes, sir; this is a hectographic print of the one I prepared.

Q. From what did you prepare it?—A. From the post-route diagram of the State of Colorado.

Q. It is an extract from the regular post-route diagram of the State?—A. Yes, sir.

Q. Does it show the situation of post-offices relatively to each other in the same manner as the regular post-office diagram?—A. Yes, sir; it is an exact copy of it, only on a large scale.

Q. [Submitting another map.] Please look at this map which purports to be of route 38156. Did you prepare the original plate of that?—A. Yes, sir.

Q. This is a hectographic copy from the original prepared by you?—A. Yes, sir.

Q. From what was it prepared?—A. From the same map; the post-route map of Colorado.

Q. Is it a precise copy of that portion of the map?—A. Yes, sir; on an enlarged scale.

Q. [Submitting another map.] I now show you the map of route 38145. Did you prepare the original drawing of that?—A. Yes, sir.

Q. From what did you prepare it?—A. The location of the topography I prepared from that map, but the route was put on at the suggestion of the man that carried the mail. I do not know what his name was. Mr. Woodward told me. The mail contractor showed me the way the route ran, and I put it on in that way.

Q. The topography is prepared from the regular post-office map?—A. Yes, sir.

Q. The location of the mail route there is prepared from these statements made to you by a gentleman purporting to be the contractor or the carrier upon the route?—A. Yes, sir.

Mr. TOTTEN. That is in the same predicament as the first map.

Mr. BLISS. We will see before we get through.

Q. [Submitting another map.] I now show you the map of route 38140. Did you prepare the draft of that?—A. Yes, sir; except I put on the route from what Mr. Debusk said. I think that is his name.

Q. The topography is from what?—A. The regular post-route diagram.

Q. The route is laid down from the information given you by Mr. Debusk?—A. Yes, sir.

Q. [Submitting another map.] I now show you map of route 38134. Did you prepare the original drawing of that?—A. Yes, sir.

Q. From what did you prepare it?—A. I took the topography from our post-route map, except the location of Greenwood. Greenwood was located according to the carrier. I had it located in Fremont County,

according to the diagram, and he told me it should be in Custer County, and showed me about where it was.

Q. How did you put on the route?—A. From his suggestion. He showed me how it ran.

Q. Do you remember his name?—A. No, sir; I do not.

Q. [Submitting another map.] I now show you the map of routes 38150 and 38152. Did you prepare that?—A. Yes, sir.

Q. From what did you prepare it?—A. From the same diagram as the others.

Q. You prepared the topography from what?—A. The post-route diagram.

Q. From what did you put on the route?—A. I put on the routes at Mr. Woodward's suggestion. He showed me how they ran.

Q. [Submitting another map.] I now show you the map of route 44140. Did you prepare the original plate of that?—A. Yes, sir.

Q. From what did you prepare it?—A. From the diagram of the State of Oregon.

Q. Were the post routes and all prepared from that diagram?—A. Yes, sir; it is an accurate copy.

Q. [Submitting another map.] This is a map of route 34149. Did you prepare this?—A. I prepared the original.

Q. You did not prepare this one?—A. Not the way the route is now.

Q. What do you mean by saying you prepared the original?—A. I put the topography on it, the location of the offices and streams.

Q. The route you did not put on?—A. No, sir.

Q. Do you know who did put it on?—A. Mr. Gorham put it on.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. You say you made the topography of the map of route 38150 and 38152 from the topography of the country?—A. Yes, sir.

Q. And Mr. Woodward gave you some instructions about putting down other matters on that map, did he?—A. Yes, sir.

Q. Please tell the jury what it was he instructed you about?—A. I copied the topography from our post-office map and then went to ask how the route was to be put on. It was shown on the map, but he wanted it routed a little differently. He showed me what corrections were to be made and I made the corrections according to that.

Q. You made the map according to Mr. Woodward's corrections?—A. Yes, sir; that is, the route.

Q. Whether that is right or not, you do not know?—A. I do not know.

Q. You don't know anything at all about it?—A. I did not look at the books, and did not follow our map.

Q. [Exhibiting a large map.] Is that the map that you had?—A. This is not the exact one; no, sir.

Mr. MERRICK. What is the date of that map?

The WITNESS. April 1, 1879.

Q. You had the map of April, 1879, had you not?—A. Yes, sir; but there are any number of copies of the same map.

Q. It is not the particular map, but it is the same thing, is it not?—A. Yes, sir.

Q. In other words, you used a duplicate of that map?—A. Yes, sir. The route is not shown on this diagram.

Q. I know it is not, and therefore I want to know why you made it that way.—A. I made it the way Mr. Woodward told me.

Mr. BLISS. That is what we wanted him to make.

Mr. WILSON. Yes; but it does not show the route, does it?

Mr. BLISS. Not as advertised; because the evidence is conclusive that instead of going across one side of a square, it was deviated to go around three sides.

Mr. WILSON. Where is the evidence of that?

Mr. BLISS. The evidence will show it when it comes in. We have not got to that route yet. We are simply, for convenience, identifying all these maps, being particular to show what are copies from the originals, and what are variations from the originals.

Mr. WILSON. It is sufficient for us to know that he has not made a map of the route.

Mr. BLISS. He has made the map we wish.

Mr. MERRICK. He has made a map of the route as traveled.

Q. Do you know whether that is a representation of route 38145 or not?—A. No, sir; I do not.

Q. Under whose direction did you make that?—A. I went up to Mr. Woodward, and he had the carrier there, and the carrier showed me on a diagram how the route ran.

Q. How he traveled, in other words?—A. Yes, sir.

Q. That is not a correct representation of the route, is it?—A. I do not know.

Q. Is it a representation of the route as advertised?—A. I do not know that.

Q. Is it a correct representation as it is on the post-office maps?—A. No, sir; not the map I copied.

Q. The map you copied was the map of the route as advertised, was it?—A. No, sir; it had been changed since the route was advertised. The map I copied from, I think, is dated April 1, 1879.

Q. I am talking about April 1, 1879.—A. That was not when the route was advertised.

Q. It was advertised in 1877 and went into operation in 1878?—A. This was a year afterwards.

Q. Is this a correct representation of the route as advertised?—A. I could not say.

The COURT. I understand the object of these diagrams to be simply to illustrate to the jury by the eyesight the testimony which the Government expects to establish as to the routes actually run.

Mr. MERRICK. That is all, sir.

The COURT. As the service was performed. If the Government fails to establish that fact, of course this evidence passes for nothing. It is a mere illustration to the eye of what the Government expects to prove by witnesses.

Mr. MERRICK. That is all, sir.

Mr. WILSON. I suppose they are intended to influence the minds of the jury in some way or other, and if they are to have any such effect as that we certainly have a right to show that they are not the routes which the department advertised and which the contractors bid off to run, and are not the routes as to which they made affidavits for expedition and increase of service.

The COURT. All that depends upon the importance or the pertinency of the evidence of the witness as to the service performed. If the Government are at liberty to prove that the service was performed according to a route different from that advertised or contracted for, then this illustrates what they propose to prove. If the Government is not at liberty to prove any deviation in actual performance from the con-

tract as advertised for, this passes for nothing. It all depends upon whether the Government shall be allowed to show the actual service as performed, although it may deviate from the route called for under the contract.

Mr. MERRICK. The object is as your honor has indicated, and, so far as the affidavits are concerned, that is a matter for consideration when the testimony is in. The manner in which the work was done was the manner of the contractor who made the affidavits.

Mr. WILSON. All I want to do is to show that they have not exhibited a diagram of these routes.

The COURT. As I understand the offer, they do not propose to show that these diagrams correctly represent the routes as called for in the contract. They are not offered for that purpose.

Mr. WILSON. Then, I cannot conceive how they can be material.

The COURT. That is a question which we have not reached.

Q. I understand you to say that as to routes 38145, 38140, 38134, 38150, and 38152, you did not make these maps from the routes on the post-office diagram, but from the directions given you by Mr. Woodward or by the carrier?—A. I cannot remember the routes by the numbers. If you will let me see them I can tell you.

Mr. WILSON. I will give them all to you, and I wish you to state those you made up from directions given you by Mr. Woodward, or by these carriers. Just give the numbers to the stenographer.

The WITNESS. [Referring to maps.] 38150 and 38152 were made up from the directions of Mr. Woodward and the carrier; 38145 was also; 38140, the same; 38134 was made up in the same way; 38156 was copied from the map as the route was shown on the map; 44140 was copied from the map; 38135 was copied from the map.

The COURT. That is the one we are on now.

Mr. TOTTEN. Yes.

Mr. WILSON. Haven't you got 38149?

The WITNESS. No, sir.

Mr. BLISS. There is no such route.

Mr. WILSON. 34149?

Mr. BLISS. He said he did not make that, and therefore I didn't hand it to him.

Mr. TOTTEN. He said Gorham made it.

Mr. BLISS. Yes.

By Mr. BLISS:

Q. The topography of all of them you made from the post-office map?

—A. With the exception of one.

Q. Which one?—A. The one that has the Greenwood office on it.

Q. And that you changed in that respect?—A. Yes, sir.

By Mr. WILSON:

Q. The carrier told you where Greenwood was, and that is the point that the carrier located for you?—A. Yes, sir.

Q. Where did you say you thought it was?—A. I had it represented in Fremont County, and he told me it was down in Custer County, and showed me about where it was.

JOHN T. CALLAHAN sworn and examined.

By Mr. BLISS:

Question. What is your business?—Answer. I am the inspection clerk for several States and Territories.

Q. In the Post-Office Department?—A. Yes, sir; in the office of the Second Assistant Postmaster-General.

Q. As such, have you anything to do with the action of the department in connection with recoupment, so called?—A. Yes, sir; we have been doing some of that work.

Q. Do you know whether there has been any recoupment by the department for failure to perform service during the month of December, 1880, on that portion of route 38135, from Pueblo to Greenhorn, which was connected with the supply of Agate, and if there was such recoupment, when was it?—A. On the——

Mr. WILSON. [Interposing.] Hold on a moment. It is a matter of record, if your honor please. We have a right to see the record, and if it is competent evidence it can go in. If it is not we will object to it.

Mr. BLISS. I presume he has it.

Mr. WILSON. I would like to see it. [A paper submitted to Mr. Wilson.]

The COURT. Gentlemen, what do you propose to prove by this witness?

Mr. MERRICK. We propose to prove that he brought these records from the office.

Mr. WILSON. I object to them, because they are records made in February, 1882.

Mr. MERRICK. Mr. Bliss has been called out for a moment. I have not looked at these records.

The COURT. They are not records, either, exactly; but they are papers belonging to the case.

Mr. MERRICK. They are papers belonging to the case.

Mr. WILSON. They were made, your honor, long since the action of these men.

The COURT. I want to see what they have to say in answer to your objection.

Mr. MERRICK. They are records recouping for the improper payment——

Mr. WILSON. I object to Mr. Merrick stating what they are. I say that they are not competent because of their date, and it is not proper for him to state what they are. I am objecting to it.

The COURT. I cannot understand the nature of the offer——

Mr. WILSON. [Interposing.] The court can see that they are made at the time I have stated, right on the face of the record.

The COURT. You have stated something that I do not know; that they were made in 1882.

Mr. WILSON. I say that the papers on their face show that fact, and I simply state that fact in order that the court may get the point of my objection.

The COURT. I have the point of your objection. Now, I want to know what the other side has to say on that subject.

Mr. MERRICK. These are records showing a recoupment against these parties on account of the improper payment for service alleged to be performed on the Greenhorn route between the main line and Agate, which service never was performed. And when that fact was discovered in the Post-Office Department it was corrected, and the amount required to be refunded, which was done. Now, the offer is to show that it was done, and also to show when it was done, and that this improper payment was not required to be refunded until the date of which Mr. Wilson speaks. Here was a route upon which, according to the proof, a payment was made which ought never to have been made, and

the knowledge of the impropriety of making it was in the Post-Office Department at the time it was made. If made by error, the error should have been corrected immediately upon the discovery. The proof showing it to be made by error was there when it was made. Now, I want to show that the error never was corrected until a certain period of time, as bearing directly upon the case before the jury; that although the Post-Office Department, at the time it made the payment, and for many months after the time it made the payment, had the evidence before it directly that the payment ought not to have been made, and ought to have been corrected, yet made the payment and never did correct it. Now the only point made upon this matter of Agate is, not as to distance, not as to the establishing of a post-office there, nor of itself and alone, that there was no service to that post-office, but the point is that the post-office being established, and no service ever having been rendered, and no mail ever having been carried there, and the Post-Office Department being informed of the fact that the contractor never executed his obligation to carry the mail, with that evidence before it, paid him for doing it, and his not having done the work a month's extra pay was allowed to him for cutting Agate off, power being in him under the law when no service was rendered to stop the contract entirely, and no power existing in him when no service was rendered to pay a month's extra pay. I want to show that the error was persisted in continuously through a series of months and never corrected, in order to raise the presumption that the payment was knowingly made in face of the evidence on the record showing that it ought not to have been made.

The COURT. Does not your evidence show that the route by way of Agate was discontinued within a month?

Mr. MERRICK. Yes, sir.

The COURT. And that an extra allowance of a month for the discontinuance was then made?

Mr. MERRICK. Yes, sir.

The COURT. And that closed it. This evidence, I understand, is for the purpose of showing subsequently that the contractor refunded the amount which he was so allowed.

Mr. MERRICK. Not exactly that, because to say that the contractor refunded it would indicate that the contractor came forward and refunded it.

The COURT. No, but on the demand of the Government.

Mr. MERRICK. On the demand of the department, which demand it was proper and obligatory upon the Second Assistant Postmaster-General to make, and which demand Mr. Brady never did make as long as he was there; that this improper payment was made by him, knowing it to be improper at the time it was made, with the evidence before him showing it, and that he, as long as he remained in office, never corrected it, and that when he went out—

Mr. TOTTEX. [Interposing.] That is not a correct statement at all. The evidence was not before him. Your papers will show that.

Mr. MERRICK. The evidence was introduced on yesterday of the statements of the postmaster at Agate that there was no service there; that there had never been a mail, and he reported that there was never a mail. And yet with that evidence in the department the payment for one month for service never rendered is made by the department, and not only that, but a month's extra pay is allowed to the contractor, because he never did do work during the month for which he was paid.

The COURT. You have that proof?

Mr. MERRICK. We have that proof. Now I want to show a persistence in this fraud on the part of the Government. Mr. Totten says that when the payment was made the evidence was not there. That is for the jury. Am I right or wrong. If the evidence was not there when the department acted the evidence came in there soon after, and when Brady had the evidence before him that it was a wrongful payment, he should have corrected that wrongful payment, on the theory of the other side, when the evidence came in.

The COURT. For what reason was it that the route by way of Agate was discontinued? Because there was no service performed?

Mr. MERRICK. Yes, sir.

The COURT. And you want to show that the Second Assistant knew that?

Mr. MERRICK. Yes, sir.

The COURT. That he allowed a month's extra pay with the knowledge that no service had been rendered? What additional light upon this issue can be thrown by the fact that the contractor was caused by the Second Assistant Postmaster-General, after Brady went out, to refund.

Mr. BLISS. The question is not the one you put; not that the department subsequently did this thing, but to show that Brady did not during his term enforce the refunding of this money.

The COURT. He ordered the payment to be made.

Mr. BLISS. No. Your honor will bear in mind there are two payments. First, the payment made in the regular routine for the month's service supposed to have been performed, and then there is the payment for the month's extra pay after the termination of the contract. Now, as to the money for the service supposed to have been performed and not performed, we want to show that so long as Mr. Brady remained Second Assistant Postmaster-General that money was not recouped. We do not care whether it was done afterwards or not. That is unimportant. We are going to show that down to the time of Mr. Brady's going out of office it was not recouped. If your honor holds that the offense was complete when he knowingly made the false payment, then perhaps this evidence is not essential to our case. But it does seem to me it is proper to show that an improper payment, made under Mr. Brady, brought to his knowledge either before made or immediately after it was made, was not, so long as he remained in office, recouped. That is all. I do not care about the question of the subsequent payment. And as bearing upon the question of a month's extra pay, of course that is not a question that comes up here. Let me call your honor's attention to this fact, that the contract expressly gave to the Postmaster-General the power, and therefore to Brady, to revoke the contract for disobeying the instructions of the Post-Office Department. Here was a contractor getting \$3,900, and having the work done for \$800, making \$3,100 profit. Mr. Brady had the power to revoke the contract for the failure to obey the instruction of the Post-Office Department. He did not do it. He went on during his entire term leaving this contractor this little petty sum which he had illegitimately obtained, as we say. We want to show the fact that he was allowed to go on until the end of his term.

The COURT. You want to show that it was recouped?

Mr. BLISS. No, sir; we want to show that it was not recouped by Brady.

The COURT. The records show it was paid?

Mr. BLISS. Yes, sir.

The COURT. But the records do not show that it was recouped.

Mr. BLISS. We were met by these gentlemen in chorus yesterday. "Why don't you get it back."

The COURT. You answered to that that you had got it back.

Mr. BLISS. Yes, sir; but that is not evidence. It is merely showing negatively that it was not repaid.

The COURT. You are not bound to do that. The records do not show that any recoupment was ever demanded by Brady so long as he was in office. They do show, so far as the evidence is concerned, that the allowance for the service was made by Brady, and that the extra pay for the month was allowed by Brady, and there is no evidence yet in to show that Mr. Brady as long as he continued in office ever rectified that error, if it was an error. Now, it seems to me that the case ought to rest there.

Mr. BLISS. The burden being upon us to establish any act of his, we thought that we had better assume that, sir.

The COURT. It is objected to by the other side. I will sustain the objection.

Mr. WILSON. These gentlemen have taken now about a half an hour in the statement to the court of that to which I was objecting, when your honor had decided it was not competent in substance. Now, I do not propose that these gentlemen shall have the advantage of that in that kind of way, and therefore I now withdraw my objection, and they can put these papers in evidence if they desire. I do that, if your honor please, not conceding that they are competent testimony, but because the manner in which they have presented this thing to the court is unfair to my clients, and because the papers upon their face show that not until many months—near a year—after my client went out of office did this administration recoup this \$30 or \$40. Now, I withdraw my objection, and they can put these papers in evidence.

The COURT. Before the evidence is admitted I wish to say just one word. In the progress of a trial like this, before a jury, of course, counsel on both sides must be permitted to state what they propose to prove, and to what they propose to object. The court is not a court-martial, but it is a court of justice, and we do not clear the court-room when a question of law is raised. The jury must sit and hear the discussion upon questions of law, and it is not unfair or unusual for counsel to state in the presence of a jury what they propose to prove and the effect of it. And it is equally the right of the other side, in making the objection, to state their views in opposition, so that I really think there is nothing unfair about it. But the objection has been withdrawn, and the papers are admitted.

Mr. WILSON. If your honor please, allow me to say just one word in that connection. I recognize the rule, as your honor states it, when they present a record here to the court and an objection is made to it, the court then looks to that record to see whether or not it is competent. The court does not take their statement, nor the statement of anybody, about it. But here is the record and the papers which go to show to the court and from which the court could see that there is nothing in them which could by any possibility be legitimate evidence. Now, what I object to now and for the future in this case is, when we object to a record that the court shall determine that record without the counsel stating in the presence of the jury or the court what that record contains. That is my point.

Mr. MERRICK. I want to make one single remark.

The COURT. I wish to meet what Judge Wilson says. When a rec-

ord is presented it is the privilege of the court to call upon the counsel to state what he expects to prove by the record. The court is not obliged to go through a voluminous record nor to make any conjectures as to what the object of the offer may be, but must call upon counsel to state what they expect to establish.

Mr. TOTTEN. This record was not objected to on account of its contents, but on account of its date. That was the sole reason why it was objected to as improper testimony—because it had been created long after these transactions had ended. Now, right in the face and eyes of that, your honor—and I think it was a very unfair thing to do—it was stated fully, with comments by both gentlemen, that Mr. Brady was in there with this testimony before him, and that he purposely perpetrated this fraud. That was the language, and it strikes me that it was very objectionable; and that he had left this thing uncorrected. Now, the record shows that General Brady went out the middle of April, and that this route was discontinued the 1st of January, he being in there a little over three months after the discontinuance of the route, and of course there could have been no information gotten about it in that time.

The COURT. That is as to the fact.

Mr. TOTTEN. Exactly. And I object to these gentlemen making such statements to the jury.

The COURT. The evidence is admitted because the objection is withdrawn.

Mr. BLISS. This jacket is headed—

Division of inspection; office of the Second Assistant Postmaster-General; State of Colorado; route, 39135; year, 1881; quarter ended December 31st.

Termini of route, Pueblo to Greenhorn.

Contractor, John R. Miner.

Residence, Washington, D. C.

Miles, 32.

Trips per week, three.

Pay, \$1,315.20; half-trip, \$4.20.

The jacket contains matter connected with Salt Creek, and also other papers on Agate in this record; but I will only read the portion relating to Agate.

First, failed to supply P. O. at Agate (3 miles), from December 1 to 31, 1881, inclusive.

Then there is the provision about Salt Creek. Then there is the direction to the present Postmaster-General to deduct.

Date of case, January 19, 1882.

Reported to auditor January 21, 1882.

Notice to contractor, February 14, 1882.

Do you desire that I should read the inclosures?

Mr. WILSON. Oh, read anything you want.

Mr. BLISS. Then I will stop reading anything further.

[The paper just read by Mr. Bliss was submitted to the clerk to be marked for identification, and was by him marked 39 B.]

CROSS-EXAMINATION.

By Mr. WILSON:

Q. What kind of papers come to this inspection division and what are the matters that are dealt with in that division?—A. We get all papers relating to the manner in which the service is performed from the postmasters, especially at the ends of the routes, so that we can see

what amount of service has been performed, and what has failed to be performed, so that we can deduct the pro rata amount of the contractor's pay.

Q. For failure to perform the service ?—A. For failure to perform the service.

Q. How often do you get these reports from the postmasters ?—A. Once in three months—every quarter from the postmasters at the ends of the routes.

Q. How often do you get reports from the postmasters at the intermediate post-offices ?—A. I have made a mistake. We get reports from postmasters monthly, each month, at the ends of the routes, but we make up our deduction cases at the end of each quarter. I wish to make that correction right here.

Q. How often did you get reports from the intermediate offices ?—A. We do not get anything from the intermediate offices unless there is some complaint and non-supply of that office. In such a case we set the papers aside for the purpose of making a fine for the non-supply of an office.

Q. Now, then, the check which you have upon the contractor is the report that is made to you monthly by the postmasters at the terminal points ?—A. Yes, sir.

Q. If the carrier or contractor fails to start at the proper hour from the one point, or fails to arrive at the other end of the route at the proper hour, and *vice versa*, that is the mode in which you ascertain whether or not he has discharged his duty according to his contract ?—A. Yes, sir.

Q. And for the failure to discharge his duty as evidenced by those reports you impose the fine ?—A. Deduct a corresponding amount of pay.

Q. Here is a route running from Saint Charles to Greenhorn, and there is a post-office off at one side of that route, established by the Post-Office Department, or by order of the Postmaster-General, I believe, is it not ?—A. The First Assistant Postmaster-General.

Q. The First Assistant Postmaster-General establishes this post-office, Agate, off to one side of this line. Now, how are you going to know whether or not the contractor supplies that office ; how do you find it out ?—A. Upon the complaint of the postmaster that it should be supplied.

Q. Until he does make complaint you would not know anything about it, would you ?—A. No, sir ; we would not know anything about it, it not being a terminal office.

Q. So that the inspection division would have no knowledge of the fact until the postmaster would make some complaint that the mail was not supplied. Now, then, have you furnished to the prosecution in this case the papers from the inspection division in relation to this route, Saint Charles to Greenhorn ?—A. Yes, sir ; they have been in the hands of—

Q. [Interposing.] Do you know where they are now ?

The WITNESS. The inspection papers ?

Mr. WILSON. Yes.

A. No, sir ; I could not say where they are.

Q. [Submitting papers to witness.] Here are the papers handed to me by Colonel Bliss. I want you to look them through and pick out the papers there that belong to the inspection division.

Mr. BLISS. [Having approached Mr. Totten, counsel for defense, and taken papers from him.] It is all very well to deliberately withhold

the two papers belonging to the inspection division. [Submitting papers taken from counsel to Mr. Wilson.]

Mr. WILSON. I did not know that I had withheld any of them.

The COURT. Oh, that was an oversight.

Mr. BLISS. [To Mr. Wilson.] The implication was that I had withheld the papers from you.

Mr. WILSON. There was no implication about it.

Mr. TOTTEN. Mr. Bliss, hereafter I don't want you to snatch papers out of my hand. I don't propose to be treated in that sort of style by anybody.

The COURT. A man may have his own property.

Mr. TOTTEN. Well, that is very true, your honor, but I am not used to being treated in that way, and I don't propose to permit it.

A. [After having inspected the papers.] There are no papers here belonging to the inspection division.

Q. [Having submitted papers handed him by Mr. Bliss.] Of all the papers you have, how many papers belong to the inspection division?—

A. There are no papers belonging to the inspection division amongst these.

By Mr. MERRICK:

Q. What are those papers in your hand?—A. These belong to the Sixth Auditor's Office.

By Mr. WILSON:

Q. [Resuming.] What papers have you in the inspection division of the Post-Office Department appertaining to this route, and by which the Second Assistant Postmaster-General would be advised as to whether or not the service was being properly performed as to this post-office, Agate?—A. I do not know that there are any, unless there may be something inside of these papers that I do not know anything about.

Q. Would the Second Assistant Postmaster-General know anything about the failure to supply this post-office, Agate, excepting some papers came to him through the inspection division?—A. I should suppose not, sir.

Q. Is there any other mode by which he could know?—A. Sometimes the papers get scattered in the office and get into various bureaus, but they find their way to the inspection division.

Q. Exactly; but the proper place for them is the inspection division?—A. The proper place for them is the inspection division.

Q. Now, if there are any papers relating to Agate in the inspection division, they are not amongst these?—A. No, sir; not that I see.

Q. Those papers that the other side have presented here belong to the Sixth Auditor's Office?—A. Yes, sir; from the appearance of the papers.

Q. What control has the Second Assistant Postmaster-General over the Sixth Auditor's Office or its files?—A. That is a question for them to decide. I do not think they have any control over it.

Q. Have you charge of that division?—A. No, sir.

Q. Who has charge?—A. Mr. Green has charge of it now.

Q. Do you know of the prosecution having gone there and gotten papers out of that division in regard to this post-route?—A. Well, I hunted the papers up several times, and I suppose it was for the purpose of this investigation.

Q. What has become of them?—A. They may be back in our office, for all I know.

Q. Did you turn them over to the prosecution?—A. They were called for by Mr. Woodward.

Q. Did you turn them over to him?—A. I gave them to Mr. Green, and Mr. Green turned them over to Mr. Woodward.

Mr. WILSON. [To counsel for the Government.] Gentlemen, we want them.

Mr. BLISS. If you subpoena the clerk you will find them on the files of the office.

Mr. WILSON. It is your business to bring them here.

Mr. BLISS. It is not my business to do any such thing.

Mr. WILSON. When we asked for them we were informed that Mr. Bliss had them, or the Department of Justice.

Mr. BLISS. You have never been informed that Mr. Bliss had them by any means.

Mr. WILSON. We were informed that we must call on Mr. Bliss.

Mr. BLISS. I beg to state that I never had the papers, and I never have seen them, and I am informed that, while they were got up by Mr. Green and shown to Mr. Woodward, they are on the files and have been there all the time. Now, if they will send word to Mr. Green he will bring them right in. There is no trouble about that.

Mr. WILSON. [Referring to papers in his hand and addressing Mr. Bliss.] Do you admit that these papers are the ones which you spoke about and read yesterday?

Mr. BLISS. Those are the papers I read yesterday.

By Mr. WILSON:

Q. [Submitting papers to the witness.] These are the ones that belong to the Sixth Auditor's Office?—A. Yes, sir.

Mr. BLISS. It appears on the back, "Auditor." I read that to the jury.

Mr. WILSON. Yes; and you read it to the jury as though Mr. Brady had something to do with these papers.

Mr. MERRICK. It is getting extremely unpleasant, and it will be made a little more so if this does not stop.

The COURT. We have a long journey to travel, gentlemen, and we might as well not get out of temper.

Mr. TOTTEN. As long as we are treated well, we will behave ourselves properly; if not, they will hear from us.

By Mr. WILSON:

Q. [Resuming.] Now, I show you this paper [submitting a paper to the witness] and ask you to state whether the first information you got as to whether this postmaster had carried that mail to Agate did not occur long after General Brady went out of office, and whether you did not yourself send out the inquiry by which the facts were ascertained.

Mr. BLISS. The first information that this witness got?

Mr. WILSON. The first information the department got as to whether that service had been performed.

Mr. BLISS. How can this witness speak of the information of the department?

Mr. WILSON. He has the record in his hand which will enable him to say.

Mr. MERRICK. Is that the record which was offered?

Mr. WILSON. Yes, sir; your record.

A. There is a paper in here which gives us the first information that I have any knowledge of.

Q. Let me see that paper, will you?—A. [Correcting himself.] No, I am in error; I thought this paper [exhibiting a paper] was the first intimation we had of it. But, so far as my recollection serves me, Mr. Finley came up into our office one day and spoke about Agate not having been supplied.

Q. Who is Mr. Finley?—A. Mr. Finley was a clerk then in Mr. Woodward's room, I believe. He came up and wanted to find out whether we had any information in regard to the office of Agate not having been supplied on this route 38135, and I searched through the papers and found no information to that effect. He said that he had information that the office had not been supplied, so I suggested the propriety of writing out to the offices that were each side of Agate, the post-office at Agate having been discontinued, and not knowing where the late postmaster was. I wrote to each side of that office to ascertain whether that office had been supplied during the month that it was required to be supplied by an order of the Post-Office Department, or by an order of the Second Assistant Postmaster-General, and accordingly we got this information.

Q. When did you write?—A. [Referring to a paper in his hand.] The date of this is December 6, 1881.

Q. Now, up to December 6, 1881, the inspection division of the Second Assistant's office had no information at all that that mail had not been supplied?—A. Not within my knowledge.

Q. The first information you got is that, is it not?—A. Yes, sir; this is the first information our division got.

Q. And that is nearly a year after General Brady left?—A. This is dated 6th of December, 1881. I have no special knowledge when General Brady left. We received this, according to the stamp of our office, December 20, 1881.

Q. That is the time you got the information?—A. Yes, sir.

Q. Now, I will ask you to state whether up to the time General Brady went out of office he or the office had any information whatever that this post-office Agate had not been supplied?—A. Well, I just took charge of those books in July, 1881, and therefore have no knowledge of anything bearing on this matter prior to that time.

Q. But you made search of the records, did you not?—A. Yes, sir; I made search through the papers.

Q. How long back did you go?—A. Well, I run over the papers on the whole route—the whole period of service.

Q. And you found nothing?—A. I found nothing.

Q. Now, I want you to make a careful examination of those records and files of that division, and then come back here and tell the jury whether you find anything whatever showing that Agate was not supplied until you received this letter on the 20th day of December, 1881. If you have already done it to your satisfaction you need not do it again.

—A. Well, I made a pretty general search.

Mr. WILSON. [To Mr. Bliss.] Do you admit that we had no such knowledge?

Mr. BLISS. No, sir; we say that you had knowledge.

Mr. WILSON. Where is the evidence?

Mr. BLISS. We will show you when we come to the jury.

Mr. WILSON. We have not seen the evidence of it.

The COURT. You are not to be convicted without evidence.

Mr. WILSON. They made an argument here a little while ago on this testimony. Now, I want to show by this witness on the stand that there was no foundation in fact for that argument.

The COURT. It seems, so far as this witness has any knowledge, that in the inspection office there is no such evidence.

By Mr. WILSON:

Q. [Resuming.] Would there be in any place in the department that you have any knowledge of?—A. If there was it should follow right down to the division.

Q. It should be there if anywhere?—A. Yes, sir; it should be there.

Q. When service is discontinued you allow a month's extra pay for the service discontinued?—A. That is a question that belongs to another branch of our office.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. Among the papers put in there is a paper addressed to the Second Assistant Postmaster-General, dated December 2, 1880, from the postmaster at Pueblo, Mr. Ingersoll, contained in the jacket discontinuing Agate, which contains the following statement:

The carrier of mail on route 38135 has informed me that he will not stop at Agate post-office unless the pay is increased for said service, and the time extended in carrying the mail from Pueblo to Greenhorn. He claims that he will be obliged to go eight miles off the present route to take in Agate, and that there is no broken road, and for a part of the road the driver must get out to prevent the carriage from upsetting.

Do you know anything about that letter?—A. No, sir.

Q. Then in your answer saying that there was nothing in the Second Assistant Postmaster-General's—A. [Interrupting.] Not so far as our office was concerned.

Q. Then there may be another section or division of the Second Assistant's office?—A. There is another branch of that office.

Mr. BLISS. This is the letter of the 2d of December, on which Mr. Brady ordered the service omitted.

Mr. WILSON. The letter says that the carrier says he will not supply the post-office unless the price is increased, and thereupon Mr. Brady cuts it off.

By Mr. DICKSON [the foreman]:

Q. Did I understand you in your testimony to say that the failure to perform service upon a mail route was made known to your department upon the complaint of the postmaster at the terminus of the route?—A. I did not say that.

Q. What was it you said in reference to complaints?—A. I said when service was failed to be performed over the whole route the postmaster at the terminal point should report that on his register of arrivals and departures.

Q. Is that report made to your division?—A. Yes, sir.

By Mr. MERRICK:

Q. It covers the service for the whole road?—A. Yes, sir, over the whole road. It would come to the knowledge of the postmaster.

By Mr. DICKSON [the foreman]:

Q. What I desired to ascertain, whether there was any complaint until this information received December 20, 1881?—A. That is all that I have any knowledge of.

Q. No complaint from any postmaster?—A. I never saw any. There has no paper come within my knowledge.

By Mr. MERRICK:

Q. If there had been a failure on a side post-office there, would you have been informed of it?—A. We should have been informed of it.

By Mr. BLISS:

Q. In case of a failure at a way office, the information of a failure to supply it would not come from the postmaster at the terminal office?—A. Hardly.

Q. How would you get that information?—A. We might get it from some of the citizens.

Q. How do you get it in practice?—A. We generally get it from the postmaster himself.

H. C. WITHERS sworn and examined.

By Mr. BLISS:

Question. Where do you live?—Answer. Pueblo.

Q. How long have you lived there?—A. I have been living in Pueblo some twelve years.

Q. Have you ever had anything to do with the mail service on route 38135, from Pueblo to Greenhorn?—A. Yes, sir.

Q. What have you had to do with it?—A. I had a subcontract to carry the mail.

Q. When did you take that subcontract?—A. I commenced in 1879, I believe, July 1.

Q. How many trips a week was it running when you commenced?—A. I believe, three trips a week.

Q. On what schedule of time?—A. Seven hours.

Q. Did you carry the mail at any time—I do not mean personally, but by your employés?—A. Yes, sir; I carried it six months, I think it was.

Q. From the 1st of July, 1879?—A. Yes, sir.

Q. How many men and horses did you employ to carry it?—A. I had one man and two horses.

Q. How were they used?—A. I would make the round trip with one and then with the other.

Q. You mean by the round trip, from Greenhorn to Pueblo and back?—A. Yes, sir.

Q. And then the next round trip with the other horse?—A. Yes, sir.

Q. You carried it for six months in that way?—A. Yes, sir.

Q. And then what became of it?—A. There was a man lived at Greenhorn who wanted to take the contract from me to carry it, and I asked him what he would take it for, and he told me, and I told him I would let him have it if he wanted to carry it.

Q. Who was that?—A. A man by the name of Howard.

Q. He carried it well?—A. Yes, sir; and he let another man have it. As long as the mail run all right, I didn't pay much attention to it. But I was bound for it, and I had to give bonds for as long as the contract run.

Q. What was your bid?—A. One thousand dollars a year.

Q. You carried it three trips a week on what schedule?—A. Seven hours.

Q. Did you make that time?—A. Yes, sir; we generally made it. Sometimes, if there was bad weather and the creek was up, we didn't get through.

Q. Then you got fined I suppose?—A. Yes, sir.

Q. What time did you leave Pueblo?—A. When I first commenced running it, I left Pueblo Monday morning, and then after this man took it that I let have it they wanted it changed, and he had it changed to leave Greenhorn Monday morning.

Q. Then it left Pueblo Tuesday?—A. Yes, sir.

Q. It left each end on the alternate days, then?—A. Yes, sir.

Q. But sometimes it left Pueblo Monday, and sometimes Greenhorn—A. It ran that way. It went from Pueblo Monday and came back Tuesday; and when it was changed it left Greenhorn Monday, and went from Pueblo on Tuesday.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. What is your business?—A. I keep a feed and sale stable at Pueblo.

Q. And a livery stable?—A. No, sir; I don't have much livery. I keep a feed and sale stable.

Q. You did keep some livery?—A. Oh, sometimes I had a little.

Q. You keep horses for sale?—A. Yes, sir.

Q. You are a dealer in horses?—A. Yes, sir.

Q. Now, you had a man at one end or the other of these routes to take care of the horses?—A. Oh, I was keeping stable, and I took care of my own horses.

Q. Did you keep the same horses all the time?—A. No; I changed sometimes.

Q. When a horse got a little jaded you would put another on?—A. I would trade sometimes.

Q. You were not using the same horses all the time?—A. I did not use the same horses all the time; still I believe I could. Two good horses would have carried it, I believe.

Q. You had to leave on regular time in the morning?—A. Yes, sir.

Q. And arrive on regular time in the evening?—A. Yes, sir.

Q. And then you had to start back, &c., on regular time?—A. Yes, sir.

Q. Suppose one of your horses got sick, then what?—A. If one got sick or lame I had to take another one.

Q. They did occasionally get sick or lame?—A. Sometimes.

Q. You had to have a reserve force, then, did you?—A. I did not keep one for that purpose.

Q. I know, but you had them on hand?—A. Yes; I had horses.

Q. Now, you seem to be a horseman—that is to say, you are a man who deals in horses, and you know something about this matter. If you had just exactly two horses, and no more, and you were going to carry that mail from Pueblo to Greenhorn and back three times a week in seven hours, and one of those horses would happen to get sick, or get disabled in any way, how would you get along?—A. I would have to hire a horse right away.

Q. You would have to supply yourself at once with a horse, would you not?—A. Yes, sir.

Q. And if they both got sick you would have to supply yourself with two horses right away, would you not?—A. Yes, sir.

Q. So that if a contractor, who is liable to fines and reductions for failure to perform service, is going to carry that mail according to his contract, it would not do for him simply to have two horses?—A. Yes; he could have two. If nothing got the matter he would be all right.

Q. But suppose something got the matter, he would be fined, would he not?—A. He would have to look out for that afterwards.

Q. So that to properly equip a route of that kind it would take more than two horses?—A. No, sir; that is all I use.

Q. I am not talking about that now, Mr. Withers. You and I will get along splendidly, because I think you are a man with pretty good sense, and I do not profess to be extraordinarily endowed in that way. I want you to state to the jury now whether a contractor who is going to carry the mail promptly, as his contract requires, would sufficiently equip the route if he took just enough to make the trips backwards and forwards and did not take account of the accidents that might occur to his horses. Now, what is your judgment about that as a horseman?—A. Well, I can tell you what I did.

Q. No, no; I do not want to know what you did. Your horses might have gotten along for six months, for you only carried it six months, and you carried it in the summer time chiefly, too, did you not?—A. Yes; I commenced the 1st of July.

Q. Now, come down to the winter. How would it be then; are not horses more liable to be injured and knocked up then?—A. The roads are worse in the winter, as a general thing.

Q. Now, suppose you are going to equip that route to run it for four years, summer and winter; do you think a contractor would start out with just simply two horses and two men, saying that they were enough to do that service and properly equip that route for four years?—A. Well, I did not know. I just commenced with two horses.

Q. And then, during the six months that you had it, in the best part of the year, you did not use the same horses all the time, did you?—A. Well, I think I could have used the same, but I traded.

Q. I thought you said a while ago that some of them got sick?—A. I say if they did get sick I would have to get another one.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. Suppose a man took a contract to run that route upon the long schedule with a single horse, or claimed that he could do it with one horse. If that horse got sick, he would have to scrub around and get another one?—A. Yes, sir; or he would have to take the mail on his back and strike out afoot. He could do that on the long schedule.

Q. On the long schedule, a man could foot it?—A. Yes, sir.

Q. As I understand you, during the time you were running it you did not have to make any change of horses, because the two horses you had proved adequate?—A. No, sir; I traded the horse. That is the way I came to change.

Q. In your opinion, as a horseman, would it be necessary, in running that route on the schedule of seven hours three times a week, to equip it with three men and four horses regularly kept for that purpose?—A. I don't think it would pay the best that way.

Q. You performed the service with your two horses?—A. Yes, sir.

By the COURT:

Q. I suppose something depends upon the kind of horse a man has. If a man owned crippled horses he would need more, would he not?—A. Yes, sir; I think he would.

WILLIAM HIGGASON sworn and examined.

By Mr. BLISS:

Question. Where do you live?—Answer. Greenhorn, Colorado.

Q. How long have you lived there?—A. Five years.

Q. Have you had anything to do with the mail on the route from Greenhorn to Pueblo?—A. I have.

Q. What did you have to do with it?—A. I carried it a while.

Q. How long?—A. From the 16th of March, 1881, to the 1st of July.

Q. Did you have a contract or arrangement with somebody by which you carried it?—A. I had a verbal contract.

Q. With whom?—A. Under Mr. Withers.

Q. While you were carrying it how many times a week did you run?—A. Three times, the round trip.

Q. What time did you take in going from one end to the other?—A. From five to eight hours.

Q. How many men and horses did you employ?—A. I used two horses and myself.

Q. You drove?—A. Yes, sir.

Q. Did you drive two horses at the same time?—A. No, sir.

Q. How was that?—A. I left one at home and drove one one trip and then drove the other.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. When did you come to Washington?—A. I arrived here the 9th

Q. The 9th of this month?—A. Of May.

Q. Have you been here ever since?—A. Yes, sir.

Q. As a witness in this case?—A. Yes, sir.

Q. Have you been here before on this business?—A. No, sir.

Q. This is the first time you have been here?—A. Yes, sir.

Q. You carried it, as I understand you, from March to July, 1881?—A. From March 16; yes, sir.

Q. Why did you not keep on?—A. I did not think there was enough money in it.

Q. It would not pay. Who took care of the horse you left behind you when you went off and left one?—A. Nobody.

Q. You turned him out?—A. Yes, sir.

Q. Suppose one of these horses had gotten sick, what would you have done then?—A. I have run the same horse two weeks.

Q. He did not flourish on it?—A. He seemed to do very well.

Q. Did you ever carry it in the winter time?—A. No, sir.

Q. What kind of weather do you have down there in winter?—A. We have different kinds.

Q. I suppose so; sometimes it is cold, and sometimes it is hot?—A. Yes, sir.

Q. I want to know if you have bad weather in winter—snows and rains, and bad roads, and so on—along this route?—A. I have seen bad roads in the winter time; yes, sir.

Q. Are they generally good or bad?—A. Generally pretty good.

Q. In the winter?—A. Yes, sir.

Q. Do you have any snows down there?—A. Yes, sir.

Q. How deep does the snow get there?—A. I have seen it, along the foot of the mountain, about two feet.

Q. If you were going to carry that mail for four years, and were liable to be fined, and had deductions made from your pay for failure to get mails through on time, do you think it would be safe to equip yourself with simply two horses?—A. Yes, sir.

Q. Suppose one of them got sick, what would you do then?—A. I would run one of them.

Q. Suppose he kept sick a good while, then what would you do?—A. It would be owing to how long he would stay sick. If I thought he was never going to get well, I would probably buy me another.

Q. Your opinion is that two horses are plenty for the route, year in and year out, for four years?—A. That would be all I would want; yes, sir.

Mr. WILSON. Well, that is enough.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. How much pay did you get?—A. Two hundred and ten dollars a quarter; \$840 a year.

By Mr. WILSON:

Q. Who paid it to you?—A. I think it came to me through Mr. Withers.

Q. You made your deal with him?—A. Yes sir.

Mr. WILSON. Withers got a thousand.

Mr. BLISS. [To Mr. Wilson.] And you got \$3,900. [To the witness.] That is enough.

JOHN B. SLEMAN, recalled and examined.

By Mr. BLISS:

Question. Have you the warrants upon route 38135?—Answer. Yes, sir.

Mr. BLISS. I desire them from July, 1878.

The WITNESS. Here they are. [Submitting papers.]

Mr. BLISS. Do you desire to see these papers, gentlemen?

Mr. WILSON. What are they?

Mr. BLISS. The warrants on these routes.

Mr. WILSON. Just give the substance of them.

Mr. BLISS. The first is one dated November 8, 1878, No. 11645, for \$140.65, payable to E. M. Ames, subcontractor of John R. Miner, or order, indorsed by E. M. Ames, subcontractor of John R. Miner, and some subsequent indorsement. Draft signed by D. M. Key, Postmaster-General, and J. M. McGrew, Auditor of the Treasury for the Post-Office Department.

Draft No. 11647, dated November 8, 1878, for \$856.40, drawn to the order of J. L. Sanderson, subcontractor of John R. Miner, signed by D. M. Key, Postmaster-General, and J. M. McGrew, auditor. Indorsed by J. L. Sanderson, sub-contractor of John R. Miner, to Bradley Barlow, and by Bradley Barlow to Riggs & Co. I do not suppose the subsequent indorsements are very important. Mr. Sleiman says there are several routes put together, all covering one contract.

Mr. MERRICK. That has all been explained before. One contract covers several routes.

Mr. BLISS. The only draft concerning this route is the one which I read relating to E. M. Ames.

Mr. WILSON. Don't get them mixed.

Mr. BLISS. No. They are all together on one warrant. The one relates to another route.

Mr. WILSON. If your honor please, if it would be any accommodation, or save any time, we are perfectly willing to admit that as to these routes payments have been made according to the contract, according to the contract as increased and expedited.

Mr. MERRICK. That is not exactly what we want.

Mr. WILSON. All right; put them in.

Mr. BLISS. The next is warrant dated November 12, 1878, No. 11 payable to H. M. Vaile, assignee of John R. Miner, \$273; signed Postmaster-General Key and Auditor McGrew, and indorsed by Vaile assignee of John R. Miner. The warrant does not show anywhere what route it relates. A schedule is made up on half a dozen routes and the warrant is payment for them all. The next is a certificate ordering the auditor of the Treasury for the Post-Office Department to pay as follows:

The auditor of the Treasury for the Post-Office Department will please pay to H. M. Vaile, or order, the sum of \$273 out of any moneys due me on route—[specifying the route]

There is another order:

Pay S. F. Austin, assistant cashier, the sum of \$863 out of any routes [38135 and 38148 specified]. That is signed by John R. Miner, contractor.

Mr. TOTTEN. If your honor please, we are not willing that the clerk shall take up a paper of any kind and read an extract from it. If he is to read, let him read it all.

Mr. MERRICK. We will read such part of the paper as we think is necessary for the development of our case, and then after reading that part will hand it to the counsel on the other side and let them read the rest.

Mr. TOTTEN. I understand, then, the gentlemen propose to offer to read a part of a paper.

Mr. MERRICK. We offer the entire paper, but read such part as you please.

The COURT. You have a right to have the whole paper read if you please.

Mr. BLISS. There were various papers pinned together, and some do not relate to this route. I suppose it is not necessary to read them.

The COURT. No.

Mr. BLISS. [Reading:]

SANDUSKY, OHIO, April 3, 1879

The Auditor of the Treasury for the Post-Office Department will please pay \$865 to S. F. Austin, assistant cashier German National Bank, \$865, out of any money due me on routes 38103, 38012, 38135, and 38148, in the State of Colorado, for the quarter ending September 30, 1878.

I certify that this is the only draft drawn on that route for the said quarter.

JOHN R. MINER,
Contractor

Witnessed:

F. N. POLLETT.

JOHN M. BOALT,

Postmaster at Sandusky.

Mr. WILSON. That is a paper written to the Sixth Auditor of the Treasury. I do not care anything about it, but you can see that it has no sort of relation to the Second Assistant Postmaster-General's office.

Mr. BLISS. It relates to payment. It is the order upon the Post-Office Department to make the payment in that way.

The COURT. I understand that the indictment charges that the money was paid on these routes in consequence of this conspiracy or alleged conspiracy. It is necessary that they should prove the payment.

[The two sets of papers last read were marked by the clerk 47 B and 48 B, respectively.]

Mr. BLISS. The next is warrant No. 14085, dated January 25, 1879. Pay H. M. Vaile, assignee of John R. Miner, or order, \$1,391.85. Signed by Postmaster-General Key and Auditor McGrew. Indorsed: Pay John J. Cisco, or order, H. M. Vaile, assignee of John R. Miner.

OCTOBER 14, 1878.

The Auditor of the Treasury for the Post-Office Department will please pay H. M. Vaile, or order, the sum of ——— dollars, out of any moneys due me on routes 3802 and 38135, in the State of Colorado, for the quarter ending December 31, 1878.

I certify that this is the only draft drawn on this route for the said quarter.

JOHN R. MINER,
Contractor.

Witnessed :

M. C. RERDELL.

J. M. EDMUNDS,

Postmaster at Washington, D. C.

The draft is indorsed: H. M. Vaile.

[The paper last read was marked by the clerk 49 B.]

OCTOBER 1, 1878.

The Auditor of the Treasury for the Post-Office Department will please pay H. M. Vaile, or order, the sum of the entire amount of any moneys due me on route 38102, 38103, 38112, 38134, 38135, 38139, 38140, 38148, 38151, in the State of Colorado, for the quarter ending March 31, 1879.

I certify that this is the only draft drawn on said route for the said quarter.

JOHN R. MINER,
Contractor.

Witnessed :

M. C. RERDELL.

J. M. EDMUNDS,

Postmaster at Washington, D. C.

Indorsed: H. M. Vaile.

[The paper last read was marked 50 B by the clerk.]

Mr. TOTTEN. Your honor notices that this was nearly a year before this alleged conspiracy was made; it was an assignment contrary to law also.

Mr. BLISS. This next is draft No. 6394, dated July 25, 1879, pay Middleton & Co., assignees of John R. Miner, or order, \$2,028.27.

A schedule is annexed :

STAR SERVICE.

The United States, Dr., to John R. Miner, for carrying the mails in Colorado [specifying the various routes, and among others 38135], \$219.20 per quarter.

WASHINGTON, D. C., May 19, 1879.

The Auditor for the Treasury for the Post-Office Department will please pay S. W. Dorney, or order, the sum of \$219.20, out of any moneys due me on route 38135, from Pueblo to Greenhorn, in the State of Colorado, for the quarter ending June 30, 1879.

I certify that this is the only draft drawn on said route for said quarter.

JOHN R. MINER,
Contractor.

Witnessed :

M. C. RERDELL,

J. M. EDMUNDS,

Postmaster, Washington, D. C.

No. 9368, dated October 27, 1879. Pay Middleton & Co., assignee of John R. Miner, \$3,768.94. Signed by Postmaster-General Key and Auditor McGrew. Indorsed by Middleton & Co., assignee of John R. Miner. Schedule annexed:

STAR SERVICE.

The United States, Dr., to John R. Miner, upon [certain routes named and among them] route 38135, \$219.20 and \$767.20, the \$219.20 being described as per quarter from July 1 to September 30, 1879, and the other amount, per Moore, per order, No. 5464, July 14, 1879.

JULY 7, 1879.

The Auditor of the Treasury for the Post-Office Department will please pay S. W. Dorsey, or order, the sum of \$871, out of any moneys due me on route 38135, from Pueblo to Greenhorn, in the State of Colorado, for the quarter ending September 30, 1879.

I certify that this is the only draft drawn on the said route for said quarter.

JOHN R. MINER,
Contractor.

Witnessed:

J. M. EDMUNDS,
Postmaster, Washington, D. C.

[The two sets of papers last read were marked by the clerk 51 B and 52 B, respectively.]

No. 2667, dated March 1, 1880. Pay to J. W. Bosler, assignee of John R. Miner, \$3,907.15. Schedule annexed.

STAR SERVICE.

The United States, debtor, to John R. Miner [specifying various routes, and among them] route 38135, \$986.40.

OCTOBER 7, 1879.

The Auditor of the Treasury for the Post-Office Department will please pay to S. W. Dorsey, or order, the sum of \$986.40, out of any moneys due me on route 38135, in the State of Colorado, for the quarter ending December 31, 1879.

I certify that this is the only draft drawn on said route for said quarter.

JOHN R. MINER,
Contractor.

Witnessed:

W. F. KELLOG,
J. M. EDMUNDS.

POST-OFFICE DEPARTMENT,
OFFICE 2ND ASSISTANT P. M. GEN'L,
Washington, D. C., November 11, 1879.

Wm. H. T.

SIR: You are hereby notified that on route 38135, in the State of Colorado, from Pueblo to Greenhorn, on which John R. Miner is contractor for carrying the United States mails from July 1, 1878, to June 30, 1882, a subcontract has been filed in this office by S. W. Dorsey, contractor, whose post-office address is Washington, D. C., at the rate of \$3,945.60 per annum, commencing October 1, 1879, subject to fines and deductions.

D. L. FRENCH,
Acting Second Assistant Postmaster-General.

THE AUDITOR OF THE TREASURY,
For the Post-Office Department.

[The set of papers last read were marked by the clerk 53 B.]

No. 5174 dated May 15, 1880. Pay to J. W. Bosler, assignee of John R. Miner, or order, \$4,165.28. Signed by Postmaster-General Key and F. B. Lilly, Acting Auditor. Indorsed by Bosler, as assignee for Miner. Annexed to it:

STAR SERVICE.

United States to John R. Miner, debtor [specifying certain routes, and among them]
route 38135 to the amount of \$986.40.

[No date.]

Auditor of the Treasury for the Post-Office Department will please pay to S. W. Dorsey, or order, the sum of \$986.40, out of any moneys due me on route 38135, in the State of —, for the quarter ending March 31, 1880.

I certify that this is the only draft drawn on the said route, for said quarter.

JOHN R. MINER,
Contractor.

Witnessed :

H. LLOYD IRVINE.

J. M. EDMUNDS,

Postmaster at Washington, D. C.

[The set of papers last read was marked by the clerk 54 B.]

No. 9405, dated August 18, 1880. Pay to J. W. Bosler, assignee of John R. Miner, or order, \$4,153.57. Signed by James N. Tyner, Acting Postmaster-General, and F. B. Lilly, acting auditor. Indorsed by J. W. Bosler. Annexed :

STAR SERVICE.

The United States, debtor to John R. Miner, for transporting the mail on route 38135,
\$986.40.

The Auditor of the Treasury for the Post-Office Department will please pay to J. W. Bosler, or order, the sum of \$986.40, out of any moneys due me on route 38135, in the State of Colorado, for the quarter ending June 30, 1880.

I certify that this is the only draft drawn on said route for said quarter.

JOHN R. MINER,
Contractor.

Witnessed :

H. LLOYD IRVINE.

J. M. EDMUNDS,

Postmaster, Washington, D. C.

We might save reading a good deal of this if I were allowed to state that there is an order in the same precise form in each case.

Mr. CARPENTER. We agreed to admit it before you began.

Mr. BLISS. You agreed to admit certain things.

No. 11328, dated October 26, 1880. Pay to J. W. Bosler, assignee of John R. Miner, \$3,861.77. Signed A. D. Hazen, Acting Postmaster-General; J. M. McGrew, auditor. Indorsed by J. W. Bosler, assignee of J. R. Miner.

[The two sets of papers last read were marked by the clerk 55 B and 56 B, respectively.]

Warrant No. 11329, dated October 26, 1880. Pay John R. Miner \$16.70. Signed by A. D. Hazen, Acting Postmaster-General, and Auditor McGrew. Indorsed by Miner : Pay S. W. Dorsey, or order; and indorsed again : Pay M. C. Rerdell, or order. S. W. Dorsey. And then indorsed by M. C. Rerdell.

APRIL 7, 1879.

Auditor of the Treasury for Post-Office Department will please pay J. W. Bosler \$986.40 out of any moneys due on route 38135, for the quarter ending September 30, 1880.

JOHN R. MINER,
Contractor.

Witnessed :

M. C. RERDELL.

J. M. EDMUNDS.

Draft No. 3621, dated February 8, 1880, on the postmaster at Harrisburg, Pennsylvania. Pay to J. W. Bosler, assignee of John R. Miner, \$1,017.50. Signed by A. D. Hazen, Acting Postmaster-General. Indorsed by Bosler, as assignee of Miner.

STAR SERVICE.

The United States, debtor, to John R. Miner, for carrying mail on route 38135, \$986.40 per contract, and \$92.47 more, per order 3116.

JULY 14, 1879

Auditor of the Treasury for the Post-Office Department will please pay to J. Bosler, assignee of John R. Miner, the sum of \$986.40, or the whole amount found due out of any moneys due me on route 38135 for the quarter ending December 31, 1880

JOHN R. MINER,
Contractor

Witnessed :

M. C. RERDELL.

J. M. EDMUNDS.

The item of \$92.47 is apparently coincident with the increase in the rate of the Agate.

[The set of papers last read was marked by the clerk 57 B.]

Draft No. 9284, dated April 23, 1881, on the postmaster at Harrisburg, Pennsylvania. Pay to J. W. Bosler, assignee of John R. Miner, \$3,631.33. Annexed :

STAR SERVICE.

The United States to John R. Miner, debtor (specifying certain routes, including 38135) \$1,078.87, less, per order No. 3587, from January 1, 1881, \$92.47; add one month's extra pay on service dispensed with, \$30.82.

There is an order signed by Miner, dated October 4, 1879, to pay to J. W. Bosler \$986.40 out of any moneys due on route 38135, for the quarter ending March 31, 1881. Witnessed by M. C. Rerdell and J. M. Edmunds, postmaster, Washington, D. C.

[The papers last read were marked by the clerk 58 B.]

Warrant No. 1342, dated August 1, 1881. Pay to J. W. Bosler, assignee of John R. Miner, \$3,873.97. Signed by T. L. James, Postmaster-General, and J. H. Ela, auditor. Indorsed by Bosler, assignee of John R. Miner. Annexed is an order of Miner to pay to Bosler \$986.40 out of any moneys due him on route 38135, for the quarter ending June 30, 1881; witnessed by M. C. Rerdell and J. M. Edmunds.

Q. I see here a paper with no warrant annexed to it. It is for the quarter ending September 30, 1881; where is the warrant?—A. The warrant has not been returned to our department.

Q. It has been issued, but not returned?—A. Not returned.

Mr. BLISS. [Continuing to read :]

STAR SERVICE.

The United States, debtor, to John R. Miner [on certain routes, including 38135] \$986.40; less per order No. 10372, August 1, 1881, \$436.02; making \$5503.8.

There is also an order from Mr. Miner to pay to Bosler \$986.40 out of any moneys due upon route 38135 for the quarter ending September 30, 1881; witnessed by M. C. Rerdell and J. M. Edmunds.

[The two sets of papers last read were marked by the clerk, 59 and 60 B, respectively.]

Q. In this case, where the warrant has not been returned, was

warrant issued for the amount stated there?—A. Yes, sir; but it takes a considerable length of time after the warrants are issued before they are returned as vouchers to the department.

Mr. HENKLE. If the court please, on behalf of Mr. Miner, I simply want to make an explanation as to some of those papers.

Mr. BLISS. I object to any explanation.

Mr. HENKLE. Some of them appear——

Mr. MERRICK. [Interposing.] Wait a moment. We object. We do not want any explanations made which will lead to a discussion now.

Mr. HENKLE. I do not think you will object when you know what it is.

Mr. MERRICK. You had better object *in limine*.

Mr. HENKLE. Some of those warrants——

Mr. MERRICK. [Interposing.] Wait until the court decides on the objection.

The COURT. I do not see the propriety of it.

Mr. HENKLE. I did not suppose there could be any possible objection to it.

The COURT. You will have to confer with counsel privately and see.

Mr. HENKLE. The orders were made in blank at the time the contract was signed——

Mr. MERRICK. [Interposing.] Explain it to us, and not to the court and jury.

Mr. BLISS. Upon this route the only receipt we have proved by the witness who produced it here before was one dated Washington, D. C., November 12, 1878, which is a receipt for warrant No. 11645, signed by E. M. Ames, contractor.

By Mr. HENKLE:

Q. I want to ask you when ex-Postmaster Edmunds, of this city, died, if you know.—A. I do not remember.

Q. Did he not die before some of those orders which purport to be witnessed by him bear date?—A. I could not say.

Q. Did he not die prior to 1881?—A. I think he did.

Q. Did he not die in 1879?—A. I could not say.

The COURT. It might have been some other J. M. Edmunds.

By Mr. BLISS:

Q. Do you know, of your own knowledge, that he is dead at all?—

A. By common rumor. I did not attend the funeral.

Mr. BLISS. That is all there is upon this route.

At this point (12 o'clock and 23 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. BLISS. On the route that we have just closed I want to consider as in evidence the tabular statement similar to that put in on the other route, as to the payment made. It was proved for all the routes.

The COURT. That is your calculation.

Mr. BLISS. It is the auditor's statement certified.

Mr. WILSON. Your honor, they have put in the warrants.

Mr. MERRICK. We have put them both in.

Mr. WILSON. Put it in.

Mr. BLISS. I also offer a certified statement of the revenues of the offices.

Mr. TOTTEN. That we object to, your honor. It is not material in this case at all.

Mr. MERRICK. It was admitted in the case of the Kearney and Kent route.

Mr. BLISS. It is to prove the productiveness, which the law says shall be considered.

Mr. TOTTEN. It does not say anything about "other circumstances."

The COURT. Let it go in.

[The two papers in question are as follows :]

Statements and recapitulation of payments made to Dorsey, Miner, and Peck, their subcontractors and assignees, nineteen routes below described.

Route.	Termini.		State.	Pay accrued.	Fines and deductions.	Remissions, &c.	Total payments.
	From—	To—					
38135	Saint Charles.	Greenhorn.	Colorado.	\$9,208 51	\$92 16	\$47 60	\$9,163 95

Form of certificate.

(F)

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT

I, J. H. Ela, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this showing the gross and the net revenues of the post-offices located on route No. 1, St. Charles to Greenhorn, Colorado, from July 1, 1878, to June 30, 1881.

In testimony whereof I have hereunto signed my name and caused to be affixed my seal of office, at the city of Washington, this 12th day of June, in the year of our one thousand eight hundred and eighty-two.

[SEAL.]

J. H. ELA, Aud

Name of office.	Quarter.	Gross revenue.	Net revenue.
Saint Charles, Colorado.....	3 qr., 1878.	\$3 00	
	4 " " "	3 00	
Supplied by railroad.....	1 " " 1879	2 43	
	2 " " "	1 89	
		10 32	
Discontinued Jan'y 3, 1881.....	3 qr., 1879..	1 47	
	4 " " "	2 70	
	1 " " 1880..	3 36	\$0 74
	2 " " "	2 37	
		9 90	74
			74
	3 qr., 1880..	80	
	4 " " "	1 53	
	1 " " 1881..		
	2 " " "		
		2 43	
Agate, Colorado.....	3 qr., 1878.		
	4 " " "		
Discontinued April 14, 1881.....	1 " " 1879		
	2 " " "		
Embraced on this route from December 1, 1880, to January 1, 1881.	3 " " 1879		
	4 " " "		
	1 " " 1880..		
	2 " " "		
	3 qr., 1880..		
	4 " " "		
	1 " " 1881..		
	2 " " "		
Muddy Creek, Colo	3 qr., 1878.		
	4 " " "		
Supplied by railroad.....	1 " " 1879		
	2 " " "		
	3 qr., 1879..		
	4 " " "	\$2 58	\$0 01
	1 " " 1880..	96 31	19 08
	2 " " "	11 21	5 78
		40 10	18 65
	3 qr., 1880..	10 81	6 09
	4 " " "	8 42	4 77
	1 " " 1881..	15 53	10 53
	2 " " "	9 03	4 39
		44 91	26 37

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Salt Creek, Colo	3 qr., 1878..				
	4 " " ..				
	1 " 1879..				
	2 " " ..				
	3 qr., 1879..				
	4 " " ..				
	1 " 1880..				
	2 " " ..				
	3 qr., 1880..				
	4 " " ..	5 00		1 04	
	1 " 1881..	16 68		9 16	
	2 " " ..	15 80		6 94	
		37 48		17 14	
	3 qr., 1878..	41 40		21 38	
	4 " " ..	37 18		14 87	
	1 " 1879 ..	37 38		11 82	
	2 " " ..	31 66		7 27	
Greenhorn, Colo Supplied by railroad and by routes 38136 and 38169.		147 62		55 34	
	3 qr., 1879..	43 20		19 55	
	4 " " ..	83 94		55 46	
	1 " 1880..	82 63		45 74	
	2 " " ..	66 55		32 93	
		276 32		153 68	
	3 qr., 1880..	60 58		32 88	
	4 " " ..	60 20		36 43	
	1 " 1881..	68 99		44 11	
	2 " " ..	38 99		18 50	
		228 76		131 92	

Mr. BLISS. The statement of revenue shows that for the third quarter of 1878 the gross revenues of Saint Charles were, for the fourth quarter of 1878, \$3; for the first quarter of 1879, \$2.43; for the second quarter of 1879, \$1.89; making for the fiscal year commencing July 1, 1878, the gross revenues, \$10.32; for the fiscal year commencing July 1, 1879, the gross revenues were, \$9.90; for the fiscal year commencing July 1, 1880, the gross revenues were \$2.43.

The COURT. That is one of the way post-offices.

Mr. BLISS. Yes, sir; first out of Pueblo. The next is for Agate and shows a blank, and is indorsed "No account." The next is for Muddy Creek, and shows no revenues in the fiscal year commencing July 1, 1878, nor for the third quarter of 1879. It shows the gross revenues for the remaining three quarters of the fiscal year beginning July 1, 1879, to be \$40.10, the net revenues, \$18.65. For the fiscal year commencing July 1, 1880, gross revenues, \$44.21; the net revenues, \$26.37. For Salt Creek no revenue until the fourth quarter of the calendar year 1880. It was a station added, I think. Thirty-seven dollars and forty-eight cents was the gross revenue.

Mr. WILSON. There was no question about that, I think.

Mr. BLISS. You asked the witness Farish about the road to Salt Creek.

Mr. WILSON. We simply inquired whether in traveling to Salt Creek they traveled over a part of the same route—

Mr. BLISS. [Interposing.] You asked if Salt Creek was on this route.

Mr. WILSON. No, sir.

Mr. BLISS. No matter. It is returned on this route; gross revenue \$37.48; net revenue, \$17.14.

The COURT. That is so much in favor of the defense.

Mr. BLISS. Yes; the additional station. Greenhorn is next. The gross revenue for the fiscal year commencing the 1st of July, 1878, was \$147.62; the net revenue, \$55.34. For the fiscal year commencing July 1, 1879, the gross revenue was \$276.32, and the net revenue, \$153.6. For the fiscal year commencing July 1, 1880, the gross revenue was \$228.76, and the net revenue \$131.92. Under the nursing care of expedition the revenues fell off.

Mr. TOTTEN. What about Pueblo?

Mr. BLISS. I have not stated it. It is not in this statement included upon that route. If the gentlemen desire the revenues of Pueblo I shall be happy to give them.

Mr. TOTTEN. Why don't you give it all while you are about it?

Mr. BLISS. I cannot give but one post-office at a time.

Mr. TOTTEN. Let us have Pueblo.

Mr. BLISS. The gross revenues at Pueblo for the fiscal year ending June 30, 1879, were \$8,273.81; the net revenues, \$5,473.81. The gross revenue for the fiscal year ending June 30, 1880, was \$10,455.46; the net revenue, \$7,655.46. The gross revenue for the fiscal year ending June 30, 1881, was \$14,239.94; the net revenue was \$11,047.76. I give you that statement as furnished to me. It is not covered by the certificate.

Mr. WILSON. Go right along and put it in evidence.

Mr. INGERSOLL. It reads as if it was true.

Mr. BLISS. The tabular statement therewith shows, taking all the offices, if you count Pueblo, that the gross revenue of the route in 1879 was \$8,431.75; the net revenue, \$5,534.33. Without Pueblo for that year, the gross revenue was \$157.94; the net revenue, \$60.42. For the fiscal year ending June 30, 1880, the whole revenue, including Pueblo was \$10,781.78; the net revenue, \$7,827.79. Without Pueblo, the gross revenue was \$326.32; the net revenue, \$172.33. For the fiscal year ending June 30, 1881, the gross revenue, including Pueblo, was \$14,555.82; the net revenue, \$11,213.19. Without Pueblo, the gross revenue was \$312.88; the net revenue, \$175.43.

Mr. WILSON. Now, if you have the revenues for the mail carried beyond Greenhorn, will you please give them to me?

Mr. BLISS. I have not; and have no evidence that any mail went beyond Greenhorn.

Mr. WILSON. We will furnish it to you.

Mr. BLISS. Pueblo is the great point in Southern Colorado. It is on two railroads.

Mr. WILSON. I will ask the recall of Mr. Sears, who was the postmaster at Greenhorn.

GEORGE SEARS recalled.

By Mr. WILSON:

Question. I believe you told the jury yesterday that you were the postmaster at Greenhorn?—Answer. Yes, sir.

Q. Prior to the completion of the railroad from Pueblo to Santa Fé, what was the mode of travel between those two points?—A. Barlow and Sanderson had a stage line on the road.

Q. How often did it run?—A. It was a daily stage.

Q. Was Greenhorn one of the points on that stage line?—A. Yes, sir.

Q. Was that one of the stations on that line?—A. Yes, sir.

Q. Did they change horses and drivers there?—A. Yes, sir.

Q. Did they carry a daily mail at that time?—A. Yes, sir.

Q. After the railroad was completed from Pueblo down to Santa Fé, then what happened?—A. Then the railroad superseded the stage line, and consequently the stage was taken off and the present mode of carrying the mail was adopted.

Q. After the six times a week or seven times a week that you got your mail over that stage line had ceased by reason of the construction of the railroad, then the department put on this service between Saint Charles and Greenhorn?—A. Between Pueblo and Greenhorn.

Q. It was first between Saint Charles and Greenhorn, was it not?—A. No, sir.

Q. Oh, yes; you are mistaken about it. They first advertised the route from Saint Charles to Greenhorn, did they not?—A. I think not.

Mr. WILSON. You are mistaken there; but that is quite natural.

The WITNESS. They have advertised that way, but I think the first mail was delivered at the Pueblo office.

Mr. WILSON. After they had advertised and let the contract they extended the service up to Pueblo because Saint Charles was not on the railroad.

Q. Now, do you know that about twelve miles south of Pueblo, and near Saint Charles, there was a place on the railroad called Saint Charles, which was a water station or water-tank, where the trains did not stop?—A. Saint Charles is the crossing of a creek, and there is nothing there but a water-tank. I think at that time there was no side track.

Q. Now, from Pueblo down to Saint Charles, where this water-tank is, the road runs along the railroad, does it not?—A. Not all the way.

Q. Well, it is close by the railroad?—A. It runs at places within a mile, and other places three or four miles away.

Q. If there had been a regular station down there then the proper way to get that mail would have been to take it from the cars at that place and then run it down to Greenhorn; that would have been the right way, would it not?—A. Yes, sir.

Q. In other words, to carry the mail over the railroad as far as they could, and then take it from that point on down to Greenhorn; that would be the proper way to supply Greenhorn?—A. The Saint Charles post-office was not at that water-tank.

Q. It was close by, though.—A. It was probably four miles away. It could have been supplied from the tank at Saint Charles, and then taken to Muddy Creek and Greenhorn.

Q. Do you know the fact to be that there was an attempt to supply Greenhorn in that way at first, and there was a refusal to take the mail there because there was no facility to handle it at the water-tank?—A. I know nothing about it.

Q. After this stage line had been taken off, then your service was reduced down to once a week, was it not?—A. We received mail for a while once a week.

Q. And the fact that you had been receiving mail seven times a week, and had been cut off to once a week, stimulated the people there to circulate these petitions to get this increase of service; that was the oc-

casion of it, was it not?—A. Why, of course, that would have something to do with it.

Q. They were very much dissatisfied at only getting mail once a week, when they had before been supplied with it six or seven times a week?—Yes, sir; they wanted more mail.

Mr. WILSON. Gentlemen, have you given us all the papers in regard to this route?

Mr. BLISS. I think not. I think there are various papers.

Mr. WILSON. Very well; we want them all.

Mr. BLISS. You can have them.

Mr. WILSON. That is just what we want.

Mr. MERRICK. I stated myself in the beginning that we would introduce all the papers on the route prior to the order in controversy, and which related to that order.

Mr. BLISS. I am not sure but what you have all the papers.

Mr. WILSON. I simply want you to say whether we have or not.

Mr. BLISS. I was under the impression that you had not; but I find no others.

Mr. WILSON. I only asked for those that belong to this route.

Mr. MERRICK. You have those that relate to the order in question. Other papers relating to an indefinite time back, and also papers that were received after the period in controversy, are not properly in the case. I would as soon have them go in as not, but they are not needed.

Q. How many routes went out beyond Greenhorn?

The WITNESS. South from Greenhorn?

Mr. WILSON. South or in any direction aside from this one from Pueblo to Greenhorn.

The WITNESS. At present?

Mr. WILSON. No; commence back in 1878, and tell us all that existed in 1878, and from that time forward.

A. The route from Florence to Greenhorn for a while supplied Saint Mary's and Walsenburgh.

Q. I simply want to know what mail routes there were from Greenhorn on the south, west, or east?—A. There was none but that south; but in 1879, and I think the winter of 1880—however the records will show that—there was an office established at the foot of the mountain west from Greenhorn, called Table Mountain. That was supplied as a special office for a while, and then discontinued; since then the office of Rye was re-established on the site of Table Mountain, which is now running. That is the only office supplied west or south from Greenhorn; or that has been, since 1878.

[Mr. Wilson here spent some time in examining the papers that he received from Mr. Bliss.]

The COURT. I do not see why we should have this delay.

Mr. WILSON. I want to look at these papers, your honor.

The COURT. Your time has not come yet to use them.

Mr. WILSON. I want all the papers to go in at the same time.

Mr. MERRICK. You can't put in both sides at the same time.

The COURT. I suppose they furnish their side. They have produced, as they say, all the papers. You will have time to examine them and put in what you want yourself.

Mr. WILSON. If your honor please, we have been insisting from the beginning that the files in relation to this business should be put in evidence. I protest again that they have no right to pick out particular papers from these files and give them to the jury and then make us wait five or six weeks before we can get the balance of papers to the

jury. I think the jury is entitled to all the papers that were in files at the time the orders were made.

Mr. MERRICK. I have given them to you.

Mr. WILSON. I will read one right now:

SAINT CHARLES POST-OFFICE, COLORADO, *July 12, 1878.*

TO THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C.:

DEAR SIR: On account of the failure to receive the mail from the water-tank on the Denver and Rio Grande Railroad to supply route 38135 with mail, I have established a temporary route between here and Pueblo to supply us with mail, and I write to inform you and the department of the fact, and await instructions.

Respectfully,

JAMES FAIRBANK,
Postmaster, Saint Charles Post-Office.

On the reverse side he says:

I am paying the carrier at the rate of \$275 per year, or rather have agreed to pay at this rate.

Now, there is a paper that was on file at the time that this thing was done, and throws light on how it happened that this route was extended to Pueblo, on account of there being no mode of getting this mail from the water-tank. I want the jury to have all this case.

Mr. MERRICK. So do we.

Mr. BLISS. We do not object to it.

The COURT. I understood that they omitted to read many papers in the case, because of their having no bearing upon the issue here.

Mr. MERRICK. Certainly.

Mr. WILSON. They have a bearing upon this issue.

The COURT. Then you may introduce them.

Mr. WILSON. That is just what I am going to do.

The COURT. Your time has not come yet.

Mr. WILSON. Have we not a right to have all the papers before the jury?

The COURT. They have given you all of them.

Mr. WILSON. I want to get them in evidence before the jury.

The COURT. Your time has not come yet.

Mr. WILSON. Then the jury will have to wait.

The COURT. All the papers are at your service, and whenever your time comes you can introduce them.

Mr. MERRICK. All the papers are in.

The COURT. You cannot oblige them to give in evidence papers that they do not want.

Mr. TOTTEN. But, your honor, we have a right to have all the papers that there are in these jackets. Your honor started out with the theory that you would find out what the papers were in the Post-Office Department upon which the department acted. They have culled out a few and kept the rest in the jackets.

Mr. MERRICK. Not at all.

The COURT. The prosecution has not read them all.

Mr. TOTTEN. We want to follow your honor's rule and find out what papers there were upon which this action was based.

Mr. BLISS. Neither this paper, nor any other paper that they have, is in any jacket which has been put in evidence, or which has, so far as we can see, any bearing upon any order. It certainly was not in any jacket.

The COURT. Undoubtedly, you can use every paper in the case if you want to.

Mr. WILSON. I know. We will get them all in in due time. I am confident of that.

Mr. MERRICK. The jury will get everything from us that bears upon any question raised on this trial.

Mr. WILSON. We do not propose that you shall be the judges whether they bear on this case or not.

Mr. MERRICK. We will be the primary judges, and you can put in the rest of the papers afterwards.

The COURT. The court has no power to compel them to offer papers that they do not choose to offer. If there is any evidence among these papers that is in favor of the defense, the defense can use them at the proper time.

Mr. WILSON. If your honor please, can they put in a part of a record and keep back the other? Here is a record of the Post-Office Department upon which these orders were made.

Mr. BLISS. We waive all objections. You can put all those papers right in.

Mr. MERRICK. I don't want them.

Mr. BLISS. Let them go in now.

The COURT. I cannot stop now to have those papers read. It will confuse the prosecution with the defense. The record is here.

Mr. WILSON. Your honor, it did not confuse the prosecution with the defense when they read these petitions, did it?

Mr. MERRICK. We read every paper that bears upon any order whatever that is brought in question in this case. If any is not read, it is an omission or accident.

The COURT. The petitions were brought out on cross-examination.

Mr. BLISS. Your honor, to show that we have been perfectly fair in this case on the last route, I put in letters from Mr. Chaffee, recommending daily service, and Mr. Chilcott, recommending the same thing, neither of which were in the jacket nor referred to in the jacket on which the order was made, but which, in point of time, had preceded the making of the order, and therefore I put them in. We propose to put in every paper that we think can by any possibility, from being antecedent in date or anything of that sort, have any bearing upon any order that is made. If we fail to do so it will be because of an oversight.

Mr. WILSON. You have put in papers that have no bearing upon the orders made.

Mr. BLISS. So far as that is concerned, we put in other papers which we consider as desirable evidence in the case.

Mr. WILSON. Have you not put in papers that came from the Sixth Auditor's Office, and never had lodgment in the Second Assistant's Office in the world?

Mr. BLISS. Yes, and we have proved them.

Mr. MERRICK. And we put in a letter from the auditor's office notifying him that there had been no service at Agate before he acted on Agate.

Mr. WILSON. I think Agate has ceased to be a precious stone in this case. It has lost its value in this case.

Mr. MERRICK. Not at all. We will see.

Mr. BLISS. I now offer the contract upon route 41119, from Toquer-ville to Adairville, in Utah, dated March 15th, 1878, between John M.

Peck, as contractor, and Samuel M. Hoyt, of Washington, D. C., and D. W. C. Wheeler, of New York City, as sureties.

Mr. WILSON. We do not care to have you read it.

Mr. BLISS. I will just read such parts as I think material.

Whereas John M. Peck has been accepted, according to law, as the contractor for transporting mail on route 41119, from Toquerville, Utah, by Virgin City, Windsor, Kanab, Johnson, and Pahreah, to Adairville and back, once a week, at \$1,168 per year.

Signed by D. M. Key, Postmaster-General, and witnessed by George P. Fall and A. E. Boone, and executed by Peck on the 11th of May, 1878, Hoyt on the 24th of May, and Wheeler on the 26th of May. Acknowledged by the sureties before Edmunds, postmaster at Washington, on the 27th of May.

Leave Toquerville Monday at 6 a. m.

Arrive at Adairville Wednesday by 6 p. m.

Leave Adairville Thursday at 6 a. m.

Arrive at Toquerville Saturday by 6 p. m.

Affidavit of Mr Peck that he is a contractor, and that he will faithfully perform all his duties. Sworn to on the 11th of May, 1878.

GEORGE M. SWEENEY recalled and examined.

By Mr. BLISS:

Question. Do all papers connected with the mail routes in the Territory of Utah come into your division?—Answer. Those belong to the contract division.

Q. [Submitting a paper to witness.] This paper is headed July 8, 1879. In whose handwriting is the indorsement there?—A. The red ink writing is in the handwriting of William H. Turner.

Q. In whose hand is the black ink?—A. The body of the order is in William H. Turner's handwriting.

Q. In whose handwriting is the blue pencil writing, "Do this Brady," across the jacket?—A. General Brady's.

Q. Whose handwriting is the signature to the order?—A. General Brady's.

Q. [Submitting another paper to the witness.] I hand you another jacket, headed October 10, 1878, and ask you the same question as to the red ink indorsement.—A. The red ink writing was done by William H. Turner.

Q. And the bluepencil, "Increase?"—A. By John L. French, I think.

Q. Look at the order in black ink on the back. By whom is that written?—A. The body of the order is in William H. Turner's handwriting. The signature is by Mr. French.

Q. [Submitting another paper to the witness.] I hand you a petition indorsed "1879, June 23rd." In whose handwriting is that indorsement?—A. Byron C. Coon's.

Q. [Submitting another paper to witness.] I hand you the jacket dated July 14, 1879. Whose handwriting is that?—A. The red ink, except the pay per annum and the date, is in the handwriting of Byron C. Coon. The date and the pay are in the handwriting of William H. Turner, as also the black ink.

Q. In whose handwriting is the signature?—A. John L. French's.

Q. [Submitting another paper to the witness.] I hand you another jacket dated March 8, 1879.—A. The red ink and the blank filled in here is all in the handwriting of William H. Turner. The signature is that of John L. French.

Q. [Submitting another paper to the witness.] I hand you another jacket dated May 8, 1879.—A. The red ink in the body of the order is the handwriting of William H. Turner. The signature is by General Brady.

Q. [Submitting another paper to the witness.] I hand you another jacket dated May 8, 1879.—A. The red ink in the body of the order is by William H. Turner. The signature is by General Brady.

Q. [Submitting another paper to the witness.] I hand you a paper, dated May 15, 1879.—A. This is indorsed by Byron C. Coon.

Q. [Submitting another paper to the witness.] I hand you a jacket, dated January 23, 1882.—A. That is in my handwriting, except the signature.

Q. And the signature is whose?—A. R. A. Elmer's.

Q. Second Assistant Postmaster-General?—A. Yes, sir.

Q. [Submitting another paper to the witness.] I hand you a paper, dated June 25, 1879.—A. This is indorsed by Byron C. Coon.

Q. [Submitting another paper to the witness.] I hand you a paper with a pencil indorsement, dated December 16, 1879.—A. This is William H. Turner's indorsement.

Q. [Submitting a paper to the witness.] I hand you a letter, indorsed March 15, 1880.—A. This is Byron C. Coon's handwriting.

Q. [Submitting another paper to the witness.] I hand you a petition, dated March 13, 1880.—A. The indorsement is in Byron C. Coon's handwriting.

Q. [Submitting another paper to the witness.] I hand you a jacket, dated October 17, 1879.—A. That is by Byron C. Coon, except the signature "French," which is signed by John L. French.

Q. [Submitting another paper to the witness.] I hand you a paper, dated May 31, 1880.—A. This is Byron C. Coon's.

Q. [Submitting another paper to the witness.] I hand you an unindorsed paper headed on the inside, May 21, 1880.

The WITNESS. You mean by whom was this written?

Mr. BLISS. Yes, sir.

A. It is filled up by Wm. H. Turner.

Q. [Submitting another paper to the witness.] I hand you a jacket headed Toquerville and Pabreah, having no date to it?—A. This is Byron C. Coon's handwriting.

Q. [Submitting another paper to the witness.] I hand you a distance circular, dated March 15, 1880.

The WITNESS. Do you mean only the indorsement?

Mr. BLISS. Yes, sir.

A. This is Byron C. Coon's.

Q. I have here papers in jackets already identified under date of July 8, 1879. [Submitting paper to the witness.] The first paper is the petition, and is indorsed June 25, 1879. Whose handwriting is that?—A. Byron C. Coon's.

Q. [Submitting other papers to the witness.] I hand you two other petitions of the same date?—A. Byron C. Coon's.

Q. I have here papers in the jacket, dated October 10, 1878. [Submitting one of the papers to the witness.] Here is one petition indorsed October 8, 1878.—A. That is Byron C. Coon's.

Q. [Submitting another paper to the witness.] Here is another paper, indorsed October 8, 1879?—A. That is Byron C. Coon's.

Q. [Submitting another paper to the witness.] I hand you a paper in the jacket indorsed March 8, 1879.—A. I do not know whose handwriting it is.

Mr. BLISS. It is a subcontract.

Q. [Submitting another paper to the witness.] I hand you another paper in the jacket, dated May 8, 1879?—A. This is indorsed by Byron C. Coon.

Q. [Submitting another paper to the witness.] I hand you a paper in the second jacket of May 8, 1879?—A. This is indorsed by Byron C. Coon.

Q. I have here a jacket marked October 17, 1879, the paper in which is dated August 25, 1879. By whom is that indorsement made? [Submitting paper to witness.]—A. William H. Turner.

Q. Do you recognize those papers?—A. I recognize them as part of the files on route 41119.

Q. Which were in your charge?—A. Up to the 7th of September, 1881.

Q. To whom did you deliver them?—A. I think a messenger took them down. I do not know as to that. Mr. Finley receipted for them for Mr. Woodward.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Do you know where Mr. Woodward was at that time; the 7th of September, 1881?

The WITNESS. Where he personally was, or where his room was?

Mr. WILSON. Where he was personally?

A. I do not remember.

Q. Do you remember that he was up in Connecticut and had been for some time?—A. No; I have no recollection as to where he was on that date.

Q. Do you know of his being in Connecticut about that time, and being away from the office for a month or so?—A. I know of his being away at various times; where he was, or just the date it was, I do not know.

Q. You do not know that these papers went out of your custody the 7th of September, 1881?—A. That is the date of the receipt.

Q. Who gave the receipt?—A. H. J. Finley.

Q. Who is H. J. Finley?—A. He was a clerk employed under Mr. Woodward at that time.

Q. Where is that receipt?—A. In room 22, floor C, of the Post-Office Department.

Q. I mean where is the receipt that was given for them?—A. I say it is in room 22, floor C, of the Post-Office.

Q. Was that a receipt for the papers in bulk, or did it schedule the papers?—A. It gave the numbers of the routes and the receipt read, "Received the files on the above-mentioned routes."

Q. Did the receipt itemize the papers received?—A. No, sir; it did not itemize them.

Q. Do you know whether these are all the papers that Mr. Finley received in pursuance of the receipt?—A. Oh, there were eighty routes, I think.

Q. I know; but are these papers that you have looked at here all the papers that Finley received at that time?—A. Oh, no, sir.

Q. I mean are they all the papers pertaining to this route?—A. That I have no means of knowing.

Q. You do not know whether they have brought all the papers here

pers, and so forth, would apply to this route.

Q. How long have you been occupying your present position ?

The WITNESS. In the section I am in now, do you mean ?

Mr. WILSON. Yes, sir.

A. I have had charge of the section since June, 1881.

Q. How were you employed before that ?—A. I was correspondence clerk, in charge of another section.

Q. And the duties of the two sections are the same, excepting they appertain to different routes ?—A. Yes, sir.

Q. Now, after service has been regularly advertised, let, and tracts entered into, I will ask you to state whether it is not custom to send out distance circulars ?—A. Yes, sir.

Q. What is the purpose of that ?—A. To ascertain the correct distances between offices as certified to by post-offices.

Q. After the distance circulars have been returned to the department showing the exact distance from office to office, in case it afterwards becomes necessary to add additional distances, are not calculations based upon the distance circulars instead of the advertised distances ?—A. Yes, sir. The advertisement states that the distances stated in the advertisement are believed to be substantially correct, but that no additional pay will be allowed if not correct. When a distance comes in, that is considered the best evidence and the latest to the true distance and any calculation involving distance made subsequently could be based upon the length of the route shown by distances.

Q. We will take as an illustration, this case of Saint Charles to Grignon. Suppose it is advertised twenty-five miles, and afterwards it was to be twelve miles added to it. Having received your distance circular showing it was twenty miles, you would make your calculations upon the basis of twenty miles, would you ?—A. Yes, sir.

Q. How long has that been the practice of the department ?—A. I never knew the contrary.

Q. It has always been the practice so far as you knew ?—A. Yes.

Q. And anything that appears in that case of that kind is in accordance with the long established practice of the department ?

The COURT. We do not want his opinion. He says it is the usage of the department.

Mr. WILSON. I am not asking his opinion. I am asking if that is the thing which is just exactly the mode in which the business is done.

The COURT. He has told you that it was.

Mr. WILSON. That is all I want.

Q. [Resuming.] You have spoken of indorsements upon these packages being in the handwriting of Turner ?—A. Yes, sir.

Q. First there is the indorsement in red ink, which is in Turner's

handwriting, and then there is the indorsement in black ink, which is in Turner's handwriting, so far as these are in his handwriting, and then it is signed by Brady. Now, I want to get at what the course of business is with reference to making those indorsements, and I wish you to state now whether it is this: In the first place these petitions, letters, recommendations, &c., go to the corresponding clerk, do they?—A. When they come to the department, if they come by mail, they are opened by the messenger and placed in the box of the correspondent; he has pigeon-holes there labeled with the different States that the different clerks have charge of; from there they go to the corresponding clerk.

Q. Wait one moment, right there; now, a petition that comes over by mail would not go to the Second Assistant at all, would it?—A. Well, not——

Q. [Interposing.] Hold on a minute. I mean in the first instance?—A. I think not, unless the messenger who opened the mail would take it to him.

Q. The duty of the messenger is to open the mail and distribute it to the various divisions or sections of the Second Assistant's office?—A. Yes, sir; that is his duty.

Q. Then the natural course would be that when the petition comes in it would not go to the desk of the Second Assistant, but this messenger should put it in the box belonging to the corresponding clerk, and it would go from that box directly to the desk of the corresponding clerk?—A. That certainly would be the ordinary course. In the absence of any specific instructions, I suppose that would be the general course.

Q. And that is the general practice?—A. Yes, sir.

Q. Now, these petitions having found their way—without having ever been to the Second Assistant—to the corresponding clerk, he then makes up what they call a brief of that case, does he?—A. It depends altogether on the nature of the petition. If it was merely for a change of the hours or the days——

Q. [Interposing.] I am talking about increase and expedition of service.—A. In such a case as that he would indorse the petition, make up a jacket, stating what was requested, and the cost, &c., in red ink, for the consideration of the Second Assistant Postmaster-General.

Q. [Submitting a jacket to the witness.] Now, he having received these petitions, &c., he makes up this in red ink, does he?—A. Yes, sir.

Q. Then he takes that, and submits it to the Second Assistant?—A. Yes, sir; or his chief clerk.

Q. He looks over that, and then if he approves it he writes on it, "Do this," and signs his name "Brady."

Mr. MERRICK. Without looking on the inside?

Mr. WILSON. He considers this and determines whether he will or will not do it.

A. That may lie on the Second Assistant's table for a month. In the course of time he considers it. When he determines what is to be done he either instructs verbally or, in any manner, the clerk to do whatever the next thing is, he having written on there "Do this—Brady."

Q. It goes back to the corresponding clerk?—A. Yes, sir.

Q. Then the corresponding clerk writes out the order in black ink?—A. Yes, sir.

Q. As it appears on these jackets, and carries that back, and then

the Second Assistant puts his name to it, or the acting Second Assistant, as the case may be.—A. Yes, sir.

Q. Now that is the course of business?—A. That is the course of business.

Q. You say that this will sometimes remain there on the desk for months before the order will be made?—A. Yes, sir.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. Do you say that Mr. Brady would or would not read the petitions?—A. That I do not know. I suppose he would be just like any man investigating any matter. He would look there and would determine for himself whether it was advisable to read the petitions or read the jacket.

Q. Was it always the case that Mr. Brady made his order, "Do this—Brady," in writing; did he sometimes give verbal orders?—A. I never knew him to give an order for a very large sum except in writing. He might have done so, though I do not know it.

By Mr. DICKSON [the foreman]:

Q. Is that the usual phraseology in giving an order, "Do this—Brady?"—A. It was the phraseology adopted by General Brady.

Q. In other cases besides these?—A. Yes, sir. In my section I know it was.

Q. Those words, then, were invariably used in issuing his order to expedite or increase?—A. That is, if what he determined on doing was the same as the petition requested. If, for instance, an increase of service to seven times a week were requested, and he determined on six, then he would vary that phraseology, of course. But I think that that was the general phraseology adopted by him when he determined to grant the request of the petitioner.

By Mr. BLISS:

Q. If the petition asked for eight hours, and the final order was for seven how would that come about; would there then be on it, "Do this—Brady"?—A. In that case it could not be done on the data upon which the clerk would make the case up. The data for an expedition which the jacket was made up on would only contain that exact time. The oath of the contractor that it would require so many additional carriers and animals to perform service by a schedule of eight hours would not do for a schedule of seven, and neither the Second Assistant Postmaster-General nor any one else could from such a statement determine what it would cost.

Q. Suppose a case in which the petition asks a decrease of time to forty-eight hours, and the order made thereon is thirty-three?—A. The brief could not be made up; that is, the order for thirty-three hours could not be made up on a sworn statement for forty-eight.

Q. I am not talking about a sworn statement; I am talking about petitions.—A. I understand. But the brief, as I stated, would state the cost of doing what was requested by the petitioners and one of the factors, in fact the principal one in that, would be the affidavit as to the increase of stock and carriers.

Q. Now take a case where the petition asks for a reduction to forty-eight hours, or forty-five hours, and the oath was on the basis of what would be granted of the number of men and carriers for thirty-three

hours?—A. In that case the brief would be made up showing, if it was based on that oath, what it would require to perform it by the schedule of thirty-three hours.

Q. Though the petitions might ask for forty-five. Where there was a difference between the oath and the petitions, the schedule would be made upon the basis of that oath?—A. The service would be based on the oath.

Q. And in such case, the "Do this—Brady" would refer to the oath rather than the time named in the petition?—A. I cannot say as to that; it would depend altogether as to how the brief was made up. In such a case as that the brief would probably state what it would cost to reduce to the thirty-three hours, and the brief would accord with the order such as would be made.

Q. The brief would state the petition also?—A. It would state that the petition requested such and such things to be done, for instance, to expedite schedule to forty-eight hours' running, then it would probably state that the contractor submitted a sworn statement as to the increase of stock and carriers to thirty-three hours, and whatever he stated would be the cost of the expedition would have to be on a basis of thirty-three hours.

By Mr. WILSON:

Q. Have you known General Brady to make an order of any importance that he did not put it in writing?

The WITNESS. An order changing service?

Mr. WILSON. Yes.

A. It would have to be in writing.

Q. That "Do this—Brady," is simply preliminary to writing that in black ink?—A. Yes, sir.

Q. Did you ever know him, in any important case, to have a thing of that sort done, except by giving a direction in writing to do it; that is, "Do this—Brady?"—A. I think I have known him to give some orders, but very rarely.

Q. It was the general rule?—A. The general rule was to put it in writing. I have known him to send a memorandum along.

Q. Now, about this matter of calculation: For instance, we take it on a basis of a schedule of forty-five hours. They have given you that illustration. The contractor says that it will take so many men and so many horses to carry the mail on a schedule of forty-five hours. Then you will make your calculation upon that basis, would you not?—A. I would state first what the petition requested, then I would state what the contractor's oath was. For instance, if the petition requested forty-eight hours, I should probably state that fact. Then I should state that the contractor's sworn statement showed that to perform this service by a schedule of thirty-three hours would require so many additional carriers and animals, and the cost in dollars and cents would be such an amount for thirty-three hours.

Q. Here is what I want to get at. Suppose a petition asks for a schedule of forty-five hours. The contractor makes his oath showing the number of men and animals necessary to carry it for forty-five hours. Suppose that when the order comes to be made it is made requiring them to carry it in thirty-three hours, and does not increase the amount. The calculation is based upon a schedule of forty-five hours and upon the horses and men necessary to carry it in forty-five hours, and then he requires that the same horses and men should carry it in thirty-three. Who has gained by that, the contractor or the public?—A. Well, if the mail would be carried in twelve hours—

Mr. MERRICK. [Interposing.] Wait a moment.

The COURT. We are all capable of understanding that.

Mr. WILSON. Very well. I simply want to get attention cause that is where the Government has been cheated, by getting service faster with no increase of cost.

Mr. MERRICK. With a very large increase of cost.

Mr. BLISS. If you find a case of that kind, Mr. Wilson, we are glad to see it.

P. HENRY WOODWARD recalled.

By Mr. BLISS:

Question. [Submitting papers to the witness.] Look at those just identified by Mr. Sweeny and tell me if they have been in evidence today?

Mr. WILSON. What do you want to prove by Mr. Woodward?

Mr. BLISS. I want to prove that he has had these papers in evidence today.

Mr. WILSON. I am willing to say that his testimony in regard to this will be substantially the same as it was in the other route.

Mr. BLISS. All right; that will answer. That will do Mr. Woodward.

I offer in evidence the following papers. The first paper is a

Petition for change of service.
1879, June 25th.
41119, Utah.

Hon. DAVID M. KEY,
P. M. General, U. S. America:

We, the undersigned postmasters on route 41119, would most respectfully request that a portion of the service on route 41122, from Richfield to Kanab, be removed and placed upon route 41119, from Toquerville to Adairville, for the following reasons:

First. That route 41122 is not a feasible one for Kane County, as that route between Panguitch and Kanab passes over high mountains and through canyons oftentimes impassable during winter on account of a heavy fall of snow.

Second. The mail is entirely carried on horseback, and many times is lost and damaged, much to the dissatisfaction of the people.

Third. That route 41119 passes around the mountains and through the valleys, so that the road is more practicable and traveled as carried, or in vehicles during the winter.

Fourth. That at the present time they order there to come on the trip only once a week rather than to have it come daily and have it so worn and damaged.

Kanab, May 24th, 1879.

JOHN BATTY

P. M.

JAMES JEFFERS

P. M.

CHARLES P.

B. L. YOUNG

J. W. SEARLES

NEPHI SMITH

THOMAS

[The paper just read was submitted by counsel to the court and was by him marked 1 C.]

Mr. BLISS. The jacket is as follows:

Date, October 10th, 1878; Territory, Utah.
No. of route, 41119.
Termini of route, Toquerville and Adairville.

Length of route, 132 miles; number of trips per week, one; contractor, John M. Peck; pay, \$1,168 per annum.

Citizens of Utah Territory living on and near this route petition for two additional trips. Revenue to department from offices benefited, as follows:

	Per annum.
Virgin City.....	\$208
Windsor.....	571
Johnson.....	368
Pareah.....	168
Adairville.....	40
Total revenue.....	\$1,355

This contains another indorsement, as follows:

Increase service two trips per week from November 1, 1878, and allow \$2,336 per annum additional pay, being pro rata.

FRENCH.

The next paper is as follows:

1878, October 8th.

41119, Utah.

Postmaster on route.

Petition for tri-weekly service.

KANAB, KANE COUNTY, UTAH, September 23, 1878.

To Hon. D. M. KEY,

P. M. General of the U. S. A., Washington, D. C.:

DEAR SIR: We, the undersigned postmasters on mail route No. 41119, Toquerville to Adairville, Utah, most respectfully solicit your favorable consideration of the inclosed petition, and would recommend that more service be placed on the aforesaid route, as the mail for a large portion of Southeastern Utah leaves the main route (from S. L. City—

Which I suppose to be Salt Lake City—

to St. George) at Toquerville and comes through this route, it being the most feasible route for both winter and summer in consequence of its passing through a level country, and is not blockaded by snow in winter, while Rosita, No. 41122, from Richfield to Kanab, Utah, passes over high mountains between Panguitch and Glendale, and is often carried on snow-shoes in winter, and the people do not consider it a safe route, and is not patronized only by the settlements on it, and a large portion of the mail matter for Mt. Carmet, Orderville, and Glendale comes on route 41119, from Toquerville to Kanab, and then passes on to route No. 41122 to its destination.

Most respectfully, your obedient servants,

JOHN BATTY,
P. M., Toquerville.

JAMES JEPSON,
P. M., Virgin City.

CHARLES PULSIFER,
P. M., Windsor.

J. W. SEAMAN,
P. M., Johnson.

NEPHI SMITHSON,
P. M., Pahreah.

THOMAS ADAIR,
P. M., Adairville.

B. L. YOUNG,
P. M., Kanab.

[The paper just read by counsel was submitted to the clerk to be marked, and was by him marked 3 C.]

This is an indorsement on a petition in the same jacket:

1878, October 8, 41119; Utah.

Petition for tri-weekly service on route.

Hon. D. M. KEY,

Postmaster-General, P. O. Department, Washington, D. C.:

DEAR SIR: We, the undersigned citizens, merchants, and others, doing business in Southern Utah and who receive their mail matter upon route No. 41119 from Toquer-

ville to Adairville, *once per week*, would respectfully represent that most or nearly all the mail matter passes for Southern Utah. It being the most secure and feasible, it is preferred by all doing business in this part of the country. We, your petitioners, ask that a tri-weekly mail be put upon this route. It will greatly facilitate business in this part of the country fast filling up with business men in mining, milling, and agricultural pursuits. This, in fact, is the only route that the people like to get their mails and the increase of mail service upon this route is preferable to any other in this country. For the benefit of the increase in population; and as in duty bound, we pray.

Kanab, Kane County, Utah Territory, September 12th, 1878.

That is is signed by thirty or forty, and may be more persons. Most of them give their names, and then follow it by their business.

That is all in that jacket.

(The paper was submitted to the clerk to be marked, and was by him marked 4 C.)

Mr. WILSON. Upon these petitions the order was made that you read.

Mr. BLISS. The order was made increasing to three trips per week, and of that we make no complaint. It is not a factor in this investigation, as we regard it. Then comes a jacket of April 8th, 1879.

No. of route, 411119.

Termini of route, Toquerville and Adairville.

Length of route, 132 miles.

Number of trips per week, 3.

Contractor, John M. Peck,

Pay, \$3,504 per annum.

Citizens living on and near this route petition for four additional weekly trips and expedition of schedule. Hon. George Q. Cannon indorses and presents petitions, and states: "The increase asked for in this petition is greatly needed. The country between the points mentioned is rapidly filling up, and I understand valuable mines are being developed. I therefore heartily indorse the petition. There are nine offices on this route that would be benefited by the improved service petitioned for. It is represented that many rich mines are being found and developed on this road, and that the country is fast filling up, which admits improved mail facilities. Contractor submits sworn statement in regard to men and horses required to perform service on present and proposed schedule.

Present schedule, 60 hours.

Proposed schedule, 33 hours.

Four trips, \$4,672 per annum.

Expedition, \$12,718.22.

Total increase, \$17,390.22.

All that is in red ink. Now comes in black ink—

First. Increase service, four trips per week, from August 1, 1879, and allow contractor \$4,672 per annum additional pay, being pro rata.

Second. Reduce running time from 60 hours to 33 hours, from August 1st, 1879, and allow contractor \$12,718.22 per annum additional pay being pro rata.

Third. Increase pay of subcontractor in like amount. Brady.

Across the red ink written on the front is, "Do this—Brady," in blue pencil, and I ask the attention of the jury to the fact that the calculation is for thirty-three hours, and the amount is for thirty-three hours.

One of the petitions inclosed in that jacket is as follows:

Hon. D. M. KEY,

Postmaster-General, U. S. A., Washington, D. C.:

DEAR SIR: We your petitioners, citizens of Kane County, Utah, would most respectfully represent that while neighboring counties are enjoying the benefits of a daily mail the majority of the citizens of aforesaid county receiving their mail on route 41119 have only tri-weekly service, which is entirely insufficient to meet the wants of the people. This is also the main thoroughfare through Southern Utah to Sunset, Arizona. Many rich mines are being found and developed, and the country is fast filling up and demands more mail facilities and a change of schedule from tri-weekly to daily service seven times a week, and a running time of forty-eight hours. Your prompt and favorable consideration on this matter will greatly promote the

growth and prosperity of this part of the country; and we your petitioners will ever pray.

KANAB, KANE COUNTY, UTAH, *May 6, 1879.*

Signed by a number of petitioners, who give their business in most cases. Indorsed:

The increase asked for in this petition is greatly needed. The country between the points mentioned is rapidly filling up and I understand valuable mines are being developed. I therefore heartily indorse the petition.

GEORGE Q. CANNON.

The other petition in the same jacket is:

The Hon. POSTMASTER-GENERAL,
Washington, D. C.:

SIR: We have the honor to submit for your favorable consideration the fact that the mail service on route 41119, from Toquerville to Adairville, Utah, is entirely insufficient for the wants of those now receiving their mail by this route, and to earnestly request that the service be increased to daily, 7 times a week, and on a less schedule than now carried, that is to say, in about 48 hours. This service is absolutely necessary to accommodate the great number of persons supplied, and to dispose of the large amount of mail matter now carried over this route. The country is already thickly settled along this route, besides a large and intelligent immigration constantly pouring into this country.

JOHNSON, KANE COUNTY, UTAH, *May 24, 1879.*

Signed by a number of people.

Indorsed on the back:

1879, June 25. 41119. Utah. Petition for increase and expedition of service.

The first I read is indorsed:

Petition for increase to 7 times a week, and expedition to 48 hours. Received June 25, 1879.

[The two papers last read were marked by the clerk 6 C and 7 C.]

Mr. BLISS. Next comes the oath. It is indorsed:

1879, June 25. 41119. Utah. Sworn statement of John M. Peck as to the number of men and animals required to perform service under present and expedited schedule.

It is one of the papers identified by Mr. J. S. Taylor.

Hon. THOMAS J. BRADY,
2d Assistant Postmaster-General:

SIR: The number of men and animals which are necessary to carry the mail on route 41119 7 times a week on the present schedule is three (3) men and six (6) animals. The number necessary to carry the mail on said route on a schedule of 33 hours 7 times a week is five (5) men and eighteen (18) animals.

Respectfully,

JOHN M. PECK.

TERRITORY OF NEW MEXICO,
County of Colfax, ss:

Personally appeared before me the above John M. Peck, and, being duly sworn, deposes and says that the above statement is true, as he verily believes. Sworn to and subscribed before me, a notary public in and for the county of Colfax, on the 22nd day of January, A. D. 1879.

J. S. TAYLOR,
Notary Public

The petitions are dated in May and received here in June, and the order was made the 14th day of July.

The FOREMAN. [Mr. Dickson.] 1879?

Mr. BLISS. 1879. The petition asked for forty-eight hours and the oath related to thirty-three hours, and the order is for thirty-three hours.

[The paper last read was marked by the clerk 8 C.]

Mr. BLISS. I am wrong about the order. It was made on the 8th July. On the 14th of July is the following jacket :

Route 41117. Termini of route Toquerville and Adairville. Length of route, miles. No. of trips per week, 3.

Contractor, John M. Peck. Pay, \$3,504.

Originally written, and that crossed out and under it put \$20,894 per annum.

1879, June 19. Appointment office reports discontinuance of office at Adairville, K County, Utah, terminal office on this route.

So far the jacket is in red ink.

From August 1, 1879, curtail service so as to end at Pabreeh, decreasing distance miles, and deduct from contractor's pay \$1,582.89 per annum, being pro rata, and al contractor and subcontractor one month's extra pay on service dispensed with.

There was something at the bottom ; I think it was "French." any rate it is crossed out, and over it is written :

2nd. Decrease subcontractor's pay in like amount.

FRENCH

I call your honor's attention to the fact that the order directing allowance is based upon the increased pay for expedition, while the expedition was not commenced until sixteen days after the order was made. The amount is calculated upon the sum allowed after expedition, although the expedition was not by its terms to begin until sixteen days after this order was made. The order was originally made based on the pay before expedition. It is altered and put up to pay after expedition, and then the order allows one month's extra pay, calculated upon the basis of the expedited schedule.

Mr. WILSON. If we are going to argue this case at this stage, I will leave the balance of the record.

Mr. BLISS. I am giving it to you as fast as I can get it in. If I can get anything, please tell me.

The next is a petition stamped as received at the inspection office March 12, 1880. It is inclosed in this jacket dated July 14th, to which I have just called attention :

Hon. D. M. KEY,

Postmaster-General :

The undersigned postmasters and others—

No ; I am wrong. That jacket has nothing in it. This follows it :

Mr. WILSON. What was it made for ?

Mr. BLISS. You see on the outside that it recites that the appointment office reports that the terminal office has been discontinued, and it is simply on that report that the order was made. There is nothing in the jacket.

Mr. WILSON. Why did you not bring the paper ?

Mr. BLISS. There is no paper.

Mr. WILSON. The report of the appointment office.

Mr. BLISS. It is not among the papers that came to us. There may have been one, but it never came to us.

Mr. WILSON. You ought to have had it.

Mr. BLISS. I cannot have anything except what they give me.

Mr. WILSON. If you had that it might show something about the case that is not known now.

Mr. BLISS. If you have it I should be happy to have you restore it to its proper place.

Mr. WILSON. I haven't it.

Mr. BLISS. Here is a paper which was not in the jacket, but apparently relates to the matter.

Mr. WILSON. Let it go in. Put in everything you have got.

Mr. BLISS. It is indorsed:

June 25, 1879. 41119. Utah. Proposition of John M. Peck to perform 7 times a week service on reduced schedule.

WASHINGTON, D. C., June 23, 1879.

Hon. THOMAS J. BRADY,
5th Assistant Postmaster-General:

SIR: I have the honor to transmit herewith my proposition for carrying the mail on route 41119 7 times a week, on a reduced schedule. Hoping it will meet with favorable consideration, I am,

Very respectfully,

JOHN M. PECK.

The paper referred to as inclosed did not come to us. A minute was made when the paper was received that the inclosure was not there.

Mr. WILSON. Where is it?

Mr. BLISS. All I can say is, it did not come to us.

The next paper I will read is a letter indorsed in pencil on the back:

December 16, 1879. 41119. Utah. Postmaster states expedition of service not required.

That indorsement was sworn to as Turner's writing. It is stamped as received at the inspection office, December 16, 1879.

SECOND ASSISTANT POSTMASTER-GENERAL:

DEAR SIR: The mail bills you sent to this office while I was absent my assistant did not understand; so he left them until I came, and I shall send them regularly now. The mail has run regularly this quarter so far, but it is terrible hard work for them to keep up the speed required on this route, and I don't believe they can do it during the storms and snows of winter in this mountain country. I do not see the propriety of this extra speed on this route. The wants of the people do not require it, and if it is any expense to the Post-Office Department to keep it up, I would recommend that it be discontinued, for sixty hours' time between Toquerville and Pahreah is all the speed that is necessary to supply the wants of the people in this backwoods mountainous country.

Yours, very truly,

NEPHI SMITHSON,
Postmaster, Pahreah, Kane County, Utah.

DECEMBER 1, 1879.

[The three papers last read were marked by the clerk respectively 9 C, 10 C, 11 C.]

The next is a petition indorsed:

1880, March 13, 41119; Utah. Petition for change of schedule, &c.

Stamped on the front as received at the inspection office May 12, 1880.

Hon. D. M. KEY,
Postmaster-General, U. S. A.:

The undersigned postmasters and others on and near post route No. 41119, from Toquerville to Pahreah, Utah Territory, respectfully represent that the present schedule of time on said route is unnecessary, and in the winter season especially, impracticable, and we suggest that the same be changed to the following time, namely:

Leave Toquerville daily at 6 a. m.

Arrive at Pahreah in 60 hours.

Leave Pahreah daily at 6 a. m.

Arrive at Toquerville in 60 hours.

We consider the present increased speed entirely unnecessary to the wants of the people, and an uncalled-for expense to the Government. And we consider that the

ms on the high mountain ridges -
quired time almost impracticable, and the peo-
d not desire or expect an increase of speed.
ville, Utah, November 12, 1879.

JOHN BATTY,
Postmaster at Toquerra
JAMES JEPSON,
Postmaster at Virgin C
ROBERT W. REEVE,
P. M. at Duncan's Retra
SAMUEL STARWORTH
P. M. at Grafl
THOMAS S. FARNES,
P. M. at Rockri
B. L. YOUNG,
P. M. at Kan
JOHN W. SEAMAN,
P. M. at Johns
NEPHI SMITHSON,
Postmaster at Pahre
CHARLES PULSIFER,
Ex-P. M. at Wind

And a number of other signers, giving their official character
business.

Mr. WILSON. Are they the same fellows that asked to have it
duced ?

Mr. BLISS. I cannot tell you. We are going to give you a chance
find out everything that is done, and then you can tell.

Mr. WILSON. You have read two or three petitions asking for a
duction of time, and now you produce petitions to have it put back
sixty hours. I want to know if the signers are the same.

Mr. MERRICK. Look and find out.

Mr. BLISS. They petitioned for forty-eight hours, and the Second
sistant Postmaster-General ordered a service of thirty-three hours
then they reported that thirty-three hours was impracticable, and
ommended going back to sixty hours as an alternative.

Mr. WILSON. And paid for the thirty-three hour service exactly
the forty-eight hour service would have cost, and the people get
benefit of it.

Mr. BLISS. We will see. Bearing upon that is a calculation
have just found in the first jacket I read.

Mr. WILSON. Read it to the jury.

Mr. BLISS. I do not think it was identified, and I do not know
the jury can make anything out of it.

Mr. WILSON. If it is in the jacket read it.

Mr. BLISS. [Reading.] Three added to six, 9; 3504 divided by
4672 and 3504 added, 8176; multiplied by 14, giving 114464
by 9, making 1271822. Off on the other side, 5 and 18 making
9 deducted, leaving 14. Below, 8176 multiplied by 23, making
divided by 9, making 20894.22. From that, 8176 deducted
12718.22.

I trust you all understand it. I am sure I do not.

Mr. WILSON. I do. We will explain that to the jury and
we saved the Government a great deal of money.

Mr. BLISS. The next paper is indorsed :

March 13, 1880. 41119. Utah. Request for increased schedule of

received at the inspection office, May 12, 1

Mr. WILSON. It got to the office about ten days before General Brady went out.

Mr. BLISS. Did he go out in April?

Mr. WILSON. He did.

Mr. BLISS. I thought not.

Mr. MERRICK. Mr. Wilson is about as near right there as he is in most cases.

Mr. BLISS. [Reading:]

OFFICE OF M. D. JOHNSON, JR.,
Kanab, Kane Co., Utah, December 8, 1879.

Hon. GEORGE Q. CANNON,
Washington, D. C.:

DEAR BROTHER: Your kind letter of recent date at hand, and many thanks for your expressions and desire to help Brother Nephi. He is in straightened circumstances on account of deductions made by the P. O. Department from his salary as mail-carrier, which has crippled him very much. The amount of deduction amounts to \$626.98, when in reality he has worked for it and should have it.

The brethren of Rockville and settlements adjacent who were the cause of these deductions feel very sorry for what they have done, and are willing to do anything to help Nephi get his pay. They did not think of injuring Nephi, but wanted increased service. Nephi is a subcontractor. It appears they care but little for his interests, as they have got the schedule of time increased unnecessarily, and get more pay for it when longer time would do for this county. Hence the inclosed petition, which please present to the P. O. Department.

I feel brother Nephi has been wronged; this is the reason why I have taken the interest in this matter that I have. If you can get the department to pay him what they have deducted it would be a great blessing to Nephi, and for which he would be very thankful, and I would also feel grateful to you.

In talking with Nephi, he says: "The increase of speed on our mail route is unnecessary. The wants of the people do not require it. The postmasters have all signed the petition, and people generally think it is got up in the interest of the contractor at Washington, and is of no practical benefit to the people here. The time specified in this petition is speed enough for this rough mountain country.

"In relation to the consolidation of the mail route from Virgin City to Rockville, an act of great injustice has been done me, because it has added seven miles of the worst mountain road in the country. To substantiate this statement, I can furnish the evidence of our best men. Beside, in ordering an increase of speed they have made no allowance for increased speed or distance, either in pay or schedule. I would far rather carry the mail fifteen miles on the route between Toquerville and Pahreah, than to carry it this extra seven miles which has been placed upon route No. 41114, without change of pay or distance.

"While I was trying to get the contractors to bring this matter before the Postmaster-General I continued to carry the mail on the discontinued route according to my contract. Because I did not carry it over that route as often as I did on route 41119, they have made heavy deductions from my pay; from the quarter ending September 30, 1879, \$86.56, and for the quarter ending September 30, 1879, \$540.42. And, besides, I have carried the mail for eight months over the discontinued route without any remuneration."

This explains it in full, consequently this lengthy letter. Please do what you can for brother Nephi.

May God bless you and yours.

Your brother, &c.,

M. D. JOHNSON, JR.

Mr. MCSWEENEY. Amen!

[The four papers last read were marked by the clerk respectively 11 C, 12 C, 13 C, and 14 C.]

Mr. BLISS. I will now offer the following jacket:

TERRITORY OF UTAH, March 8, 1879.

No. of route 41119. Termini of route Toquerville and Adairville. Length of route, 132 miles. No. of trips per week, 3.

Contractor, John M. Peck. Pay, \$3,504 per annum.

No. 14336—45

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of H. M. Vaile, whose post-office address is Independence, Jackson Co., Missouri, for service on this route, at \$3,504 per annum from January 1, 1879, until June 30, 1882, has been filed in this office.

FRENCH.

The subcontract is inclosed on a printed form headed at the top, "John W. Dorsey & Co.":

Whereas John M. Peck has been accepted according to law as the contractor on route 41119 from Toquerville to Adairville—

Mr. WILSON. [Interposing.] Don't read it all.

Mr. BLISS. I will only read such portions as I desire.

This indenture witnesseth that on this, 1st day of April, 1878, John M. Peck, party of the first part, and H. M. Vaile, of Independence, Missouri, party of the second part, have agreed as follows: That the said H. M. Vaile and his sureties, party of the second part, do jointly and severally undertake, covenant, and agree, and do bind themselves to transport the U. S. mail on route 41119, from Toquerville to Adairville and back, once a week, from the 1st of July, 1878, to the 30th of June, 1882, in accordance with the advertised schedule of time, and in full and complete compliance with the requirements of the Post-Office Department of the United States.

Then I omit part of the contract.

One round trip per week, \$1,163. The party of the second part agrees and covenants that should the Post-Office Department extend, alter, curtail, increase, or decrease the service, they will perform the service required, receiving from the party of the first part pro rata upon the pay as above stated. If any fines or deductions are made they will bear them.

The party of the second part further agrees, that if the service is expedited the pay shall be calculated and paid at the following rate:

Round trips per week, ——— \$dollars.

It is further mutually agreed that the party of the first part shall pay to the party of the second part 100 per cent. of the amount received by the said party of the first part from the Post-Office Department on account of expedition in addition to the amount hereinbefore agreed to be paid.

The party of the second part agrees to use the utmost energy in seeing that the reports of the service are promptly forwarded by the postmasters at schedule point to the department, and also to forward duplicate copies to John W. Dorsey & Co.

The contract is signed by John M. Peck, United States Government contractor; by John R. Miner, his attorney in fact, and H. M. Vaile, subcontractor. It is witnessed by M. Rerdell.

[The jacket last read was marked by the clerk 15 C, and the subcontract 16 C.]

Mr. HENKLE. Is there a withdrawal of that subcontract?

Mr. BLISS. I am going to read that next. Contracts went in and out frequently at that time.

May 8, 1879. Territory Utah.

Route 41119. Termini of route, Toquerville and Adairville.

Length of route, 132 miles.

Number of trips per week, 3.

Contractor, John M. Peck. Pay, \$3,504 per annum.

Contractor and subcontractor join in a request for the withdrawal of subcontract.

From April 1, 1879, stop all payment to subcontractor, the contractor and subcontractor having asked for a withdrawal of subcontract.

BRADY.

WASHINGTON, D. C., May 5, 1879.

Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General:

SIR: We hereby ask leave to withdraw from the files of the department the subcontract on route 41119, from Toquerville to Adairville, of April 1, 1879.

Very respectfully,

H. M. VAILE.

JOHN M. PECK, M.

[The jacket last read was marked by the clerk 17 C, and the letter 18 C.]

The next is as follows:

May 3, 1879. Territory of Utah.

Number of route, 41119. Termini of route, Toquerville and Adairville.

Length of route, 132 miles. No. of trips per week, 3.

Contractor, John M. Peck. Pay, \$3,504 per annum.

Notify the auditor of the Treasury for the Post-Office Department that the subcontract of M. C. Rerdell, whose post-office address is Denver, Arapahoe County, Colorado, for service on this route at \$3,504 per annum, from April 1, 1879, to June 30, 1882, subject to fines and deductions has been filed in this office.

BRADY.

The subcontract is inclosed.

Whereas John M. Peck has become a contractor, &c. Now, this indenture witnesseth that on this 1st day of April, 1878, John M. Peck, party of the first part, and M. C. Rerdell, of Denver, have agreed as follows, to wit: The said M. C. Rerdell (the words "and his sureties" stricken out), party of the second part, agrees to transport the United States mail on route 41119 from Toquerville to Adairville, three times per week from the first of July, 1878—

The service did not become three trips until the fall of 1878—

to the 30th of June, 1882, inclusive, in accordance with the advertised schedule, for an annual sum of \$3,504—

Which was not the pay until the fall—

And the party of the second part is to have 100 per cent. of any compensation for expedition or increase of service.

Mr. WILSON. Do you find all you have read in that paper?

Mr. BLISS. No.

Mr. WILSON. I do not see how you read it.

Mr. BLISS. I did not read it. I said it.

Mr. WILSON. If you are testifying I want you sworn.

Mr. BLISS. I am not testifying.

Mr. WILSON. He is testifying, your honor. He is not reading what is in that paper.

The COURT. I did not hear what he said.

Mr. BLISS. I called attention to the fact that here is a contract purporting to be made on the 1st of April, 1878, for carrying the mail on this route three trips per week, when three trips were not added until the fall of 1878, and for a compensation of \$3,504, when that was not the compensation until the fall of that year.

Mr. WILSON. I want your honor to say that he had no business to do anything of the kind in reading that paper. If that is proper it is something new in the practice of law.

The COURT. Certainly not.

Mr. WILSON. That is what I was objecting to. Now, will the court please suspend here to enable us to show that Colonel Bliss is wholly mistaken in what he has been stating to the court?

The COURT. You have made the correction. Now let us go on.

Mr. WILSON. I cannot make it now, and therefore I say it is wholly improper. We cannot stop and put in our explanation.

Mr. BLISS. It is agreed in this subcontract that all increase shall be paid to the subcontractor. It is signed, John M. Peck, United States Government contractor, and M. C. Rerdell, subcontractor, and witnessed by A. H. Young.

The jacket last read was marked by the clerk 19 C, and the subcontract 20 C.]

Mr. BLISS. Your honor, it will probably take me half or three-quarters of an hour to get this record in. Shall I proceed?

The COURT. No.

At this point (3 o'clock and 15 minutes p. m.) the hearing of the case adjourned until Monday morning next at 10 o'clock.

MONDAY, JUNE 19, 1882.

The court met at 10 o'clock a. m.

Present, counsel for the Government and for the defendants.

Mr. BLISS. Inclosed in the jacket which was put in evidence on Friday last, covering the contract of M. C. Rerdell, was this letter:

WASHINGTON, D. C., May 6, 1871

HON. THOMAS J. BRADY,
Second Assistant Postmaster-General:

SIR: I inclose herewith subcontract made with J. M. Peck, contractor, for carry mail on route 41119, and request that it be placed on file in the Post-Office Department. My address, until otherwise ordered, will be box 706, Washington.

Very respectfully,

M. C. RERDELL

[The paper last read was marked by the clerk 21 C, and submitted to the jury for examination.]

JAMES M. BORDEN recalled.

By Mr. BLISS:

Question. [Submitting map of route 41119.] Please look at this map and state if you made the original sketch.—Answer. Yes, sir.

Q. From what did you make it?—A. I drew it from the post-office diagram of the Territory of Utah.

Q. It is an accurate copy?—A. Yes, sir; except the running of the route.

Q. What do you mean by that?—A. The carrier told me how to run the route, and showed me the location of Winsor.

Q. Then the location of the route, with the post-office stations on it, is how derived?—A. From the carrier.

Q. Mr. Johnson?—A. I do not know; I think that was his name.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. What do you mean when you say that the topography of this map is the same as the topography of the post-office map?—A. I mean the location of the county bounds, the rivers, and the location of the offices.

Q. And that is all that you mean?—A. Yes, sir.

Q. Does it show the offices the same as the post-office map?—A. Except the location of Winsor.

Q. What is it you say the carrier gave you instructions about?—A. The way the line is drawn. The line, as shown on the diagram, is not drawn as represented there. It runs straighter. It does not make that curve down by Winsor.

Q. How did it run between Rockville and Kanab?—A. It ran in a straighter line, and followed up the river further east.

Q. Can you mark on this map the line as it is on the post-office map?—A. I think I can come somewhere near it.

Mr. WILSON. Please do so.

The witness did as requested by Mr. Wilson.

Q. What other change did you make in it?—A. The location of Winsor was not as I have represented it.

Q. Where did the diagram represent Winsor?—A. Being further east and further north.

Q. And you made this map according to what the carrier told you?—A. Yes, sir.

Q. And that is all you know about it?—A. Well, I looked at the location paper, and that was as near as I could judge from the paper, and from what he told me.

Q. [Submitting a large map.] Take that map and see whether it is one of the post-office maps?—A. This is not like the one I copied from.

Q. What is the date of the map you have in your hand?—A. March 1, 1879.

Q. What is the date of the one you copied from?—A. I think it was of a little earlier date than this; an edition before this.

Q. The topography is the same is it?—A. Except the location of the routes; the streams are the same.

The witness then left the stand.

Mr. BLISS. I now offer a letter dated

WASHINGTON, D. C., May 15, 1879.

Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General:

SIR: We hereby ask permission to withdraw from the files of the department subcontract on route 41119, from Toquerville to Adairville, Territory of Utah, to take effect September 30, 1879.

Respectfully,

M. C. RERDELL.
JOHN M. PECK.

[The paper last read was marked by the clerk 22 C.]

Mr. TOTTEN. Have you the papers with regard to this route already read to the jury?

Mr. BLISS. Yes, sir.

Mr. TOTTEN. Let us look at them. [Papers submitted to Mr. Totten.]

Mr. BLISS. I will ask the jury to look at the handwriting and signature of this letter [22 C].

Mr. WILSON. I think that is hardly proper, your honor.

The COURT. Why not? These are proved to be official papers and they are in evidence. The jury has a right to look at papers that are properly in evidence.

[The letter in question was submitted to the jury.]

Mr. WILSON. [Referring to a paper in his hand.] This is one of those records, your honor, that was made nearly a year after General Brady and Mr. Turner went out of office, and to which I object. It is the same question we had up on Friday last.

Mr. BLISS. This is a subcontract filed in the department—

Mr. WILSON. [Interposing.] I would like to have the counsel hand it to the court.

Mr. MERRICK. Counsel may state what the evidence is.

Mr. BLISS. It is a subcontract between Peck and Johnson, Johnson being the subcontractor, executed in 1879, but not filed in the department until 1882. It is the precise class of paper ruled in the other day.

The COURT. It can go in.

Mr. WILSON. We will save an exception.

Mr. BLISS. [Reading:]

Date, January 3rd, 1882. Territory, Utah.

Number of route, 41119. Termini of route, Toquerville to Pahreah. Length of route, 122 miles.

Number of trips per week, 7. Contractor, John M. Peck. Pay, \$19,311.33.

Terminate the subcontract of M. C. Rerdell from December 31, 1881. Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of Nephi Johnson, whose post-office address is Johnson, Kane County, Utah, for service on this

route, \$7,804 31, subject to the fines and deductions, unless otherwise advised, from January 1, 1882, to June 30, 1882, has been filed in this office.

ELMER.

Inclosed in that is the subcontract, as follows :

Whereas John M. Peck has been accepted, according to law, as contractor for transporting U. S. mail on route 41119, from Toquerville to Adairville, in the Territory of Utah, one time a week and back, from July 1, 1878, to June 30, 1882, by the U. S. Post-Office Department: Now, this indenture witnesseth, that, on this 10th day of July, 1879, John M. Peck, party of the first part, and Nephi Johnson, together with ——— as ——— sureties, party of the second part, have agreed as follows :

The said Nephi Johnson, and his sureties, party of the second part, do agree and bind themselves to transport the U. S. mail on route 41119, from Toquerville to Adairville, one time per week, from the 1st of April, 1879, to the 30th of June, 1882, inclusive, upon such schedule of time, and for such additional trips as the Post-Office Department may from time to time direct, and in full and complete compliance with the requirements of the postal laws and regulations of the Post-Office Department of the United States, and subject to all the requirements and liabilities of the said contractor with the said Post-Office Department for the following amounts :

- One trip per week, \$1,127.
- Two trips per week, \$——.
- Three trips per week, \$3,381.
- Six trips per week, \$6,381.
- Seven trips per week, \$7,444.

It is further agreed that if the Post-Office Department shall reduce the schedule to four miles per hour or upwards, the party of the second part is to receive \$1,000 per annum additional.

The said party of the second part agrees to comply with the regulations of the department, &c.

Signed by J. M. Peck, United States Government contractor, and Nephi Johnson, subcontractor. Witnessed by M. C. Rerdell and E. A. Madison. Certified by the postmaster at Johnson, Kane County, Territory of Utah, as to his being personally acquainted with the above subcontractor and sureties, and that he believes them fully responsible—John W. Seaman. Dated the 18th of July, 1879. Upon the back :

I hereby guarantee and bind my heirs and executors that all payments due the subcontractor under the provisions of the within contract shall be paid as therein provided.

Washington, D. C., May 5, 1879.

S. W. DORSEY. [SEAL.]

[The two papers last read were marked by the clerk 23 C and 24 C, respectively.]

NEPHI JOHNSON, sworn and examined.

By Mr. BLISS:

Question. Where do you live?—Answer. I live at Johnson, Kane County, Utah.

Q. How long have you lived there?—A. Some ten years.

Q. Have you had anything to do with mail route 41119, from Toquerville to Adairville?—A. Yes, sir.

Q. What?—A. Mail contractor.

Q. How long have you carried the mail on that route?—A. Ever since it was a route.

Q. When did it commence?—A. In 1871.

Q. And you are still carrying it?—A. Yes, sir.

Q. Under what arrangement did you carry it after the 1st of July, 1878?

Mr. WILSON. If your honor please, the subcontract shows. It is in writing.

Mr. BLISS. I am simply going to have him identify the fact that he acted under that subcontract.

A. I was under contract with John M. Peck—

Mr. WILSON. [Interposing.] Wait a moment. The contract was in writing, was it not?

The COURT. The inquiry is whether he carried out the contract. He has not been inquired of as to the terms of the contract. It is as to his action under the contract.

Mr. WILSON. I don't know what that question means if it does not mean that.

Q. [Submitting subcontract to witness.] Please look at that paper. It is not yet in evidence. Was it executed by you?—A. Yes, sir.

Q. Who was the other party who executed it?—A. John M. Peck.

Q. Was he personally present when it was executed?—A. No, sir; it was sent to me by mail.

Q. About when, if you know?—A. It was the last day of June, 1878.

Q. Had you any negotiations? Do not state what they were.—A. Yes, sir.

Q. Prior to that time?—A. Yes, sir.

Q. With whom?—A. The negotiations were signed by Miner, Peck & Co.

Q. Whom did you see personally?—A. I did not see anybody.

Q. It was all done by mail?—A. Yes, sir.

Mr. BLISS. I thought it was arranged personally?

The WITNESS. No, sir.

Q. Did you commence service under this contract?—A. Yes, sir.

Mr. BLISS. I offer it in evidence.

Mr. TOTTEN. What is the date of it?

Mr. BLISS. The date is the 27th of May, 1878. It is headed:

Miner, Peck & Co. Route 41119, from Toquerville to Adairville, Utah. Contract with subcontractor. One trip per week, \$1,127.

Whereas John M. Peck has been accepted, according to law, as the contractor for transporting U. S. mails on route 41119, from Toquerville to Adairville, Territory of Utah, one time a week, from July 1st, 1878, to June 30, 1882, by the U. S. Post-Office Department, by which contract it is agreed as follows:

Then a statement of the provisions of the contract is given, and it goes on:

Now this indenture witnesseth that on the 27th of May, 1878, John M. Peck, party of the first part, and Nephi Johnson, together with James M. Johnson and Richard E. Wilson as sureties, of the second part, have agreed as follows: The parties of the second part do jointly and severally undertake, covenant, and agree, and do bind themselves to transport U. S. mail on route 41119, from Toquerville, by Virgin City, Winona, Kanab, Johnson, and Pahreah, to Adairville and back, once a week, from the 1st day of May, 1878, to the 30th of June, 1882, inclusive, in accordance with the advertised schedule of time and in full and complete compliance with the requirements of the Post-Office Department.

The compensation stated is \$1,127 for one trip per week.

The party of the second part agrees with the party of the first part that should the Post-Office Department extend, alter, or curtail the service, or increase or decrease the number of trips, that they will perform the service required, receiving from the party of the first part pro rata upon the pay as abovesd stated. If fines or deductions are made by the Post-Office Department because the mails between the afore-said places have not been carried promptly and securely as per agreement the party of the second part agrees to pay all such fines and deductions. The party of the second part also agrees to carry without additional charge such employes of Miner, Peck & Co. as they desire.

The party of the first part also agrees to pay for each quarter's services within 30 days after the certificates of service of the postmasters at the terminal and

schedule points are forwarded to and received by the inspection division of the Post-Office Department, and the collection orders are returned or accounted for to Miner, Peck & Co. It is further mutually agreed by the parties hereto that in case said service is expedited the party of the first part shall pay to the party of the second part 75 per cent. on account of said expedition of the amount received from the Post-Office Department in addition to the sum hereinbefore agreed to be paid.

This contract is executed by John M. Peck with the understanding that it shall be executed by Nephi Johnson, and one copy forwarded to Miner, Peck & Co., by registered letter, on or before June 30, 1878. Reports of service to be promptly forwarded from schedule points to the department and also to Miner, Peck & Co.

Signed by John M. Peck, United States Government contractor, and Nephi Johnson, subcontractor, and James M. Johnson and Richard E. Wilson, as sureties. Certified by Postmaster Seaman on the 6th of June, 1878.

Q. Did you execute another copy of this subcontract, and forward it to Miner, Peck & Co.?—A. Yes, sir.

Q. [Submitting map of 41119.] Please look at that sketch-map and see if it correctly shows the geography of the country along the route, and the locality of the route?—A. Yes, sir; I think that is correct.

Q. You gave some instructions to the topographer or draftsman, did you not, as to some portions of it?—A. Yes, sir.

Q. What?—A. He got this line from Rockville to Kanab too straight. There is a large mountain. It should have gone further around the mountain.

Q. You instructed him to bring it down to the south in that way?—A. Yes, sir.

Q. I see the route stops at Pahreah. Did it ever run to Adairville?—A. Yes, sir.

Q. When it ran to Adairville how did it run from Pahreah—down this stream?—A. Yes, sir; down this stream.

[The maps of route 41119 were here distributed to the jury.]

Q. [Resuming.] I ask you if the route on this map terminates at Pahreah; it extended to Adairville, you say?—A. Yes, sir.

Q. And when it extended, ran down that stream to Adairville [indicating]?—A. Yes, sir.

Q. As originally advertised and let, did the route run by Rockville?—A. No, sir.

Q. Where did it run?—A. It ran from Virgin City to Winsor.

Q. How far was it from Virgin City direct to Winsor?—A. Forty miles.

Q. Are these distances on the map correct?—A. I should judge they were. I never knew of the routes being measured.

Q. Your best belief is that those distances are correct?—A. Yes, sir.

Q. You have been over it a great many times?—A. Yes, sir.

Q. Did you personally carry the mail?—A. Yes, sir.

Q. You drove yourself?—A. Some of the time; yes, sir.

Q. What was the population of Virgin City in 1878; how large a city was it?—A. It was a small town, I should judge, of two hundred inhabitants.

Q. Has it increased in population since 1878?—A. Not a great deal.

Q. What is the population of Duncan's Retreat?—A. Not above seventy-five inhabitants, I think.

Q. What of Grafton?—A. I should judge there were near seventy-five in Grafton.

Q. Rockville?—A. Rockville is a larger town than Virgin City.

Q. How much ?—A. I should say there were three hundred inhabitants there.

Q. What is the population of Winsor ?—A. In 1878 there were three families there.

Q. How many now ?—A. One.

Q. Kanab ?—A. Kanab has over five hundred inhabitants.

Q. How many were there in 1878 ?—A. The town has increased a little. I should judge there were near five hundred at that time.

Q. Johnson ?—A. Johnson was a place of fifteen families.

Q. How many has it now ?—A. About the same now.

Q. There has not been much change ?—A. No, sir.

Q. Pahreah ?—A. I should judge about eighty inhabitants in Pahreah.

Q. Do you mean now, or in 1878 ?—A. Now.

Q. How was it in 1878 ?—A. It has not changed much since then. Some came there and some went away.

Q. Adairville ?—A. There were four families lived there in 1878.

Q. How many now ?—A. None.

Q. What is the nature of the country there—mountainous ?—A. Yes, sir; it is a rough, mountainous country.

Q. Is it fertile ?—A. There are some fertile spots along the creek.

Q. Is there any desert ?—A. There is a desert from Johnson to Pahreah.

Q. What do you mean by a desert ?—A. A country that has no water; dry, barren.

Q. Any vegetation ?—A. Yes, sir; there are some dwarf cedars that grow in that country.

Q. Are there any inhabitants through there ?—A. No, sir; there is some grass and some mountain sage growing there.

Q. Are there any inhabitants between Johnson and Pahreah ?—No, sir.

Q. You have given the population of these towns. Are there any inhabitants between them, scattered along the route, or how is that ?—

A. No, sir; there is not.

Q. Beyond Adairville was there ever any connection to any other locality there ?—A. No mail connection.

Q. The route then went to Adairville ?—Yes, sir; and terminated there.

Q. From Toquerville north, what was the connection ?—A. It connected with Silver Reef.

Q. How did it connect up north by Bellview, and up in that direction ?—A. The route ran from Silver Reef to Kanab, and so on.

Q. To where ?—A. To Salt Lake.

Q. How far ?—A. Three hundred miles.

By Mr. COX [a juror]:

Q. Was there a post-office at Adairville ?—A. Yes, sir; there was one established there.

By Mr. BLISS:

Q. Was it continued ?—A. The books of the Post-Office Department show that it was discontinued.

Q. It has been discontinued ?—A. Yes sir; in the summer of 1879.

Q. How much mail went over that route from 1878 to 1879, about ?—
A. When I carried it three times a week, I took it on Wednesday with a light team—a light vehicle—but the other two trips in the week I carried it on horseback.

Q. How much would it weigh, ten pounds, or two hundred pounds, or what?—A. Well, it would weigh from one hundred pounds down to ten.

Q. That was when you were carrying it three trips per week?—A. Yes, sir.

Q. Beyond Kanab, how much did the mail weigh; from Kanab to Pahreah, or Adairville?—A. The mail was not very heavy. From Kanab to Pahreah I carried as much as fifty pounds sometimes.

Q. That was the largest, was it?—A. Yes, sir; merchandise and such things that were sent for by mail.

Q. What was the general average weight of the mail on that portion of the route?—A. From five to twenty-five pounds.

Q. Coming back from Pahreah to Kanab, how much?—A. But very little; generally only letters. There was a man living at Pahreah who used to send cactus and different things out by mail to different parts of the country; sometimes he would have a sack full weighing so some seventy-five or eighty pounds.

The COURT. Cactus?

The WITNESS. Yes, sir. He sent them out to different parts of the country. He was a botanist.

By Mr. BLISS:

Q. [Resuming.] Was the mail matter from Kanab to Toquerville larger than it was from Toquerville to Kanab; was it less or more?—A. It was less going from Kanab to Toquerville than it was from Toquerville to Kanab. It is so in all the routes of that part of the country.

Q. The mail brings in newspapers, and there are none going out?—A. Yes, sir.

Q. [Submitting paper to witness.] I show you petition marked — 4 C. Please look that over and see if you recognize any of the signers?—A. [After having examined the same.] Yes, sir; they are all people who lived in that country.

Q. People who lived in that country along the line of the route?—A. Yes, sir.

Q. Respectable business men?—A. Yes, sir; as far as I know.

Q. [Submitting another paper to the witness.] Now, I ask you to look at the petition marked 6 C.—A. [After having examined the same.] Those are citizens of Kanab, most of them.

Q. [Submitting another paper to the witness.] Now, I ask you to look at the petition marked 7 C.—A. [After having examined the same.] I do not recognize that petition.

Q. Do you recognize the names there as those of people living on the route?—A. There are a few here.

Q. How many?—A. I see the names of two men who live on the route.

Q. What two are they?—A. James L. Bunting and James Little.

Q. The other names you do not recognize as those of people living on the route?

Mr. TOTTEN. What difference does that make, your honor?

A. Yes, sir; there are two others who lived there at this time, but who have not since lived there.

Q. Who are they?—A. Alexander Nichols and D. B. Paddock. James Andrus lives on the route now.

Q. Are those whom you recognize all alive, so far as you know?—A. Yes, sir.

Q. When you commenced service after July, 1878, how many trips a week did you make first?—A. One.

Q. On what time?—A. Sixty hours from Toquerville to Adairville.

Q. And the same time back?—A. Yes, sir.

Q. How many men and horses did you use?

The WITNESS. For one trip a week?

Mr. BLISS. Yes; in sixty hours' time?

A. I used two men and six horses.

Q. When was it increased to three trips?—A. It was increased in November, 1878.

Q. And did the time remain the same?—A. Yes, sir.

Q. When you carried it in three trips a week, sixty hours, how many men and horses did you use?—A. I put on two more men and four more horses.

Q. It was afterwards increased to seven trips, was it not?—A. Yes,

Q. And the time reduced to thirty-three hours?—A. Yes, sir.

Q. When it became seven trips and thirty-three hours, how many men and horses did you use?—A. When they run it seven trips a week, had on seven men and fifteen head of horses, generally.

Q. When you speak of men do you mean drivers, or do you include but drivers?—A. I include the carriers.

Q. How many would it have taken to run seven trips a week in sixty hours—it never was run that way, was it?—A. No, sir.

Q. Can you form an opinion of how many men and horses it would be?—A. I would not like to.

Q. Are these numbers that you have given with or without the tenes from Pahreah to Adairville?

The WITNESS. The number of animals I used?

Mr. BLISS. Yes, sir. Did you use them when you were running to Adairville?

A. Yes, sir; when I was running to Adairville.

Q. Did it take any less after it was stopped at Pahreah?—A. No, sir; I didn't take off any horses.

Q. I have shown you a subcontract made with you. Did you subsequently make another?—A. Yes, sir.

Q. [Submitting a paper to the witness.] I show you 24 C. Please look at this paper. Is that the other contract to which you refer?—A. After examining the paper.] This is the duplicate; this is not the original.

Q. With whom did you make that contract?—A. I made the contract with John M. Peck.

Q. Was John M. Peck present?—A. Mr. John W. Dorsey came there.

Q. Came where?—A. Came to Johnson.

Q. And arranged the terms with you, did he?—A. Yes, sir.

Q. Do you know when that was?—A. I cannot say the exact date, but it was in the forepart of July.

Q. Of what year?—A. Eighteen hundred and seventy-nine.

[Submitting a paper to the witness.] Look at that letter, and see if you received it?—A. Yes, sir.

Q. You received it by mail?—A. Yes, sir.

Q. Did you have any correspondence in reference to this mail matter with anybody in Washington from time to time?—A. Yes, sir.

Q. With whom?—A. M. C. Rerdell, the letters were signed.

Q. Look at these letters—[submitting other papers to the witness]—think I showed you one of them—and see whether you received them?

A. [After examining same.] Yes, sir; I received the letters.

Q. Who were you corresponding with at that time, if with anybody?
 —A. Up to the spring of 1879, letters came to me from John M. Peck.
 Q. And to whom did you answer them?—A. I sent them to him.
 Mr. BLISS. I offer these letters in evidence, your honor:

WASHINGTON, October 11, 1878.

NEPHI JOHNSON, Esq., *Johnson, Utah*:

DEAR SIR: The Postmaster-General has ordered three trips per week on route 41119, commencing November 1st, 1878. From that date your pay will be \$3,321 per annum.
 Yours, &c.,

J. M. PECK.

WASHINGTON, Nov. 6th, 1878.

NEPHI JOHNSON, Esq., *Johnson, Utah*:

DEAR SIR: Please get up strong petitions to have the schedule time on your route reduced to 48 hours. Get letters from the officers of the Territory asking the same. If it is granted I can pay you \$5,000 a year for carrying the route.
 Yours truly,

J. M. PECK.

[The papers just read were submitted to the clerk to be marked for identification, and were by him marked 26 C and 27 C, respectively, and were then submitted to the jury for inspection.]

Q. [Submitting papers to the witness.] Please look at these two; did you receive these?—A. [After examining same.] Yes, sir.

Q. At about the time they were dated?—A. Yes, sir. It took ten days for the mail to get there.

Lock-box 714.]

WASHINGTON, D. C., April 15, 1879.

NEPHI JOHNSON, Esq., *Johnson, Utah*:

Hereafter address all communications with regard to route 41119 to M. C. Rerdell, agent, box 706, Washington, D. C.
 Yours, &c.,

J. M. PECK.

[The foregoing paper was submitted to the clerk to be marked for identification, and was by him marked 28 C.]

WASHINGTON, D. C., April 12th, 1879.

NEPHI JOHNSON, Esq., *Johnson, Utah*:

DEAR SIR: I inclose herewith a petition for increase of service on route 41119, which please have numerously signed. Also write other petitions somewhat after this form for other points along the route, and have them signed. In writing other petitions do not use the exact language of the inclosed petition, and give as many reasons as you can for the increase. Also have the county officers, members of the legislature, postmasters, &c., along the route to write letters to the Postmaster-General and to your delegate in Congress earnestly requesting an increase. Please attend at once to this matter, so as to get the increase by July 1st.

If you can get a favorable indorsement from your governor it would help a great deal. After you have the petitions signed and letters written, send all of them to me, and I will present them.

All letters relating to this route should be directed to me, as I now have charge of all of Mr. Peck's mail matter.

Very respectfully,

M. C. RERDELL,
Agent J. M. Peck.

[The foregoing letter was submitted to the clerk to be marked for identification, and was by him marked 29 C.]

Q. [Submitting a paper to the witness.] Please look at this letter and see if you received that?—A. [After examining the same.] Yes, sir.

Q. In point of time, how was the receipt of this letter with reference to

the date of Mr. J. W. Dorsey's visit to you?—A. I think it was some ten days after.

Q. Some ten days after you received this?—A. Yes, sir.

Mr. BLISS. I will now read this letter to the jury:

BEARDSLEY'S UNION DEPOT HOTEL, M. H. BEARDSLEY, PROPRIETOR,
Ogden, Utah, July 9, 1879.

N. JOHNSON, Esq.:

DEAR SIR: You will recollect that when I was writing the contract you said to me that I had better make Pahreah the terminus of the route, and I did so, but intended to reduce the pay in proportion when I came to make the figures, but I forgot all about it till I was within five miles of the railroad when it all seemed to come to me at once.

I had no fears but that you would correct the mistake judging from my acquaintance with you and your reputation where you are known. I saw Mr. Cannon, Monday, and he indorsed the petitions, and spoke in the highest terms of you, and said he would do all he could to get the increase asked for. I have sent all the petitions on to Washington, but I do not suppose they will present them till they get the new contract, as they will see at once that there is a mistake, and will probably return the contract to you. I consider it a matter of form only, but perhaps they would be better satisfied if you would have your brothers and sons' names on as sureties, and witnessed in regular form. If it was my own contract I would not care anything about it. I put the amount just the same as it was in the contract which you returned, which you said was satisfactory. It brings it nearer pro rating than any trade I have made since I left home, and say nothing about the thousand dollars either, but I am satisfied and hope you will make a good deal of money out of it. I hope you will execute it and mail it at once, as I want it in Washington by the time I arrive there, and you will oblige,

Yours, very truly,

J. W. DORSEY.

[This paper was submitted to the clerk to be marked for identification, and was by him marked 30 C.]

The next letter I will read is as follows:

M. C. RERDELL, agent, box 706.

WASHINGTON, D. C., April 3d, 1880.

NEPHI JOHNSON, *Johnson, Kane Co., Utah*:

DEAR SIR: We have concluded to increase your pay \$1.556 per annum, in order to meet the objections you have made in regard to route 41120. This action is voluntary on our part, and is intended to cover all losses on account of failure of trips or loss of time, and in future you must be expected to bear all fines and deductions. We make this allowance in order to have the service remain as it now exists, as I find that you have been writing letters to your Delegate asking to have the schedule time changed to what it was originally. If the schedule time on this route were changed back to where it formerly was, at your pay, we would lose considerably. As it is, we have of course, a small profit.

If the schedule time were changed, we certainly would endeavor to have it put back to once a week.

Hoping that you will perform the service in the future so as to avoid all fines and deductions, and further, that you will write to your Delegate asking him to withdraw all objections as to the present schedule,

I am, very truly,

M. C. RERDELL.

[The foregoing paper was submitted to the clerk to be marked for identification, and was by him marked 31 C.]

Q. [Submitting a paper to witness.] Did you receive that letter?—A. [After examining same.] Yes, sir; I received it.

Mr. BLISS. The letter is as follows:

M. C. RERDELL, Agent.

WASHINGTON, D. C., May 9, 1880.

NEPHI JOHNSON,
Johnson, Utah:

DEAR SIR: Yours of the 20th ult. to hand. In reply I have to say that your increased pay, which in my letter of April 3 I proposed to give, was, of course, intended

to commence from January 1, 1880. As that seems to be satisfactory to you, I suppose there will be no more trouble between you and me in regard to your compensation. I would like you to write at once to Mr. Cannon, asking him to withdraw his objection to the present schedule as proposed in your letter.

So far as a change of the schedule of arrivals and departures is concerned, that is entirely with you and the postmasters at the terminal offices. I inclose a blank for you and the postmasters to agree upon, leaving the running time, of course, as it is now. Please return this to me at the earliest moment, and I will see that the change is altered at the department.

Very truly,

M. C. RERDELL.

[The foregoing paper was submitted to the clerk to be marked for identification, and was by him marked 32 C.]

Mr. BLISS. I will now read this letter to the jury:

WASHINGTON, D. C., July 10, 1879.

NEPHI JOHNSON, Esq.,
Johnson, Utah:

DEAR SIR: The department has ordered the mail to be carried seven times a week (daily) on 41119, Toquerville to Adairville, on schedule of 33 hours, to commence August 1, 1879. Please commence the service, as ordered, without fail. Have this day telegraphed you, care P. M. at Salt Lake.

Hoping you will comply without delay,
I am, very truly, yours, &c.,

M. C. RERDELL.

This paper is headed M. C. Rerdell, agent, p. o. box 706.

[The foregoing letter was submitted to the clerk to be marked for identification, and was by him marked 33 C.]

Q. Did you ever see any of the defendants, except Mr. J. W. Dorsey?

—A. I have seen Mr. Rerdell within the last few days.

Q. Not until you came here; not till within the last few days?—A. Yes, sir.

Q. When Mr. J. W. Dorsey was there, did you have any conversation with him?—A. Yes, sir; we had some conversation.

Q. In connection with your negotiations?—A. Yes, sir.

Q. Did you have any discussion about increase?—A. Yes, sir; we talked over getting more trips.

Q. Did Mr. Dorsey say anything about the possibility of getting more trips?

Mr. WILSON. I suggest that you had better ask him what he said.

Mr. BLISS. I simply ask him if he said anything. That is less leading than the other.

Mr. WILSON. When was it?

Mr. BLISS. When he was out there.

Mr. INGERSOLL. What was the year?

The WITNESS. Eighteen hundred and seventy-nine.

Mr. BLISS. The summer of 1879, was it not?

The WITNESS. July, 1879.

Mr. BLISS. Well, what did he say?

A. He thought if petitions were sent in that more service could be got on the route.

Q. Did he say anything about who was interested with him?

Mr. WILSON. If your honor please, is that competent?

Mr. MERRICK. [To the witness.] State all that he said in that conversation.

Mr. WILSON. There is no such testimony in this case as warrants them giving the statement of Mr. John W. Dorsey against these defendants. I do not propose to argue it, but I want to note the objection in the record.

The COURT. [To counsel for the Government.] Has the evidence in the case reached the stage at which this testimony is competent?

Mr. BLISS. It is a little difficult for me to state why I offer it without stating what I expect the witness to say, and I presume my friends on the other side will object if I so state. But if I offer it as a declaration made during this negotiation to show Mr. Dorsey's statements of the influence they could bring in procuring the carrying out of this proposed increase of trips and expedition, it is one of the *res gesta*. I offer it in that connection, but not necessarily now as bearing upon the evidence of Mr. J. W. Dorsey's declaration as binding the other parties. I do not offer it in that connection at this stage of the case.

The COURT. The documents in this case seem to connect J. W. Dorsey, and Peck, and Rerdell, and whoever is designated by "Company."

Mr. BLISS. And Miner. And S. W. Dorsey guarantees the contract.

The COURT. Well, so far as these parties are concerned, as the evidence shows, it is enough to lead to the conclusion that they had some connection with the case. It seems to me that so far as those persons are concerned, you may put the question.

Mr. BLISS. [To the witness.] Confine your answer to this. Did he make any reference to the people connected with——

Mr. INGERSOLL. [Interposing.] I don't care how you put it; put it any way you want.

Q. [Resuming.] Was there anything said as to J. W. Dorsey and Peck——

Mr. INGERSOLL. [Interposing.] I object to that. Ask him what was said about this route.

The COURT. [To Mr. Bliss.] Yes; that is a leading question.

Mr. INGERSOLL. He is nearly dead to get in the name of S. W. Dorsey.

The COURT. [To Mr. BLISS.] Ask him what was said upon that subject.

Q. [Resuming.] What was said upon that subject?

Mr. INGERSOLL. [To the witness.] If you can possibly remember S. W. Dorsey, put it in.

Mr. MERRICK. Yes; put it in.

The COURT. No; let him go on and answer the question as it has been put.

A. Mr. J. W. Dorsey said that there was Miner, Peck, and Vaile; but I have no recollection of his telling me that S. W. Dorsey was in the company.

By Mr. BLISS:

Q. [Resuming.] Was anything said about influence at Washington?

-A. In that way. He said if we sent him petitions he thought they would have influence enough to get the petitions granted; thought they could get the service.

Q. Did he say anything about their having other contracts?—**A.** Yes, sir; he said they had a good many other contracts, but how many I couldn't state.

Mr. HENKLE. I want to note an objection and exception to what the witness said about Miner, and, as Mr. Hine is not here, for Mr. Vaile.

The COURT. I intended to limit the question to the parties who already seemed to be connected with this route.

Mr. BLISS. I have no objection to any part of the answer that alluded to Vaile being stricken out.

The COURT. As to Mr. Vaile, there seems to be no connection established by this testimony.

Mr. BLISS. Mr. Vaile was a subcontractor here. The subcontract is in evidence.

The COURT. In this case?

Mr. BLISS. On this route.

The COURT. That was a previous contract.

Mr. BLISS. It was a subcontract placed on file and then withdrawn. The subcontract was placed on file the 8th of March, 1879, and withdrawn two months afterwards, the 9th of May, 1879.

The COURT. I do not think that there is enough of evidence to connect Vaile, and if I could have foreseen the answer to the question I should have excluded Mr. Vaile from the purport of the interrogatory.

Mr. BLISS. I have no objection to its being stricken out.

The COURT. So far as Mr. Vaile is concerned, therefore, the answer may be excluded.

Mr. HENKLE. So far as Mr. Miner is concerned, I except to the question and answer.

Mr. BLISS. I have mislaid a letter, which delays me for a moment.

Mr. TOTTEN. While Mr. Bliss is looking for a paper, I want to bring to the attention of the court a suggestion, lest I might get lost in the sands of Utah. I desire to state to the court that we object to all testimony relating to acts which took place or were done prior to the 17th of May, 1879. If there was a criminal act by any of these men on that day, or prior to that day, it cannot be used in this case, for the reason that the statute under which this proceeding is now going on was passed and became a law on that day. In the next place, any act done prior to the 20th of May, 1879, necessarily must be excluded here, for the reason that this court has no jurisdiction to examine or consider those acts, because of the statute of limitations; and in the next place, that none of this testimony so far this morning, and I may say since the beginning of this trial, has anything to do with establishing the charge of conspiracy in this indictment. I want to remind the court that we are here to try a charge of wicked combination between seven men to defraud the United States, and we have not had one syllable of testimony yet, and I desire, at the outset of the week, to bring it to the attention of the court, and to the attention of the jury, that we object and except to all such testimony as has been produced here this morning.

Mr. MERRICK. What has the jury to do with it?

The COURT. When you think you see any improper offer you will have to object specifically.

Mr. TOTTEN. Your honor objected to our doing that all the time, and suggested that we had saved the point, and that was enough. I do not want it understood that we are agreeing to any of this kind of testimony to which I just alluded.

The COURT. A short objection would be enough.

Mr. TOTTEN. I have made a short one now.

The COURT. You object to the evidence.

Mr. TOTTEN. I object to the introduction of all this stuff this morning.

Mr. MERRICK. I suppose it is admitted. It is not worth while to reply to the intimations of counsel, and to say that there is plenty of proof here of conspiracy that the court and jury might take notice of it.

The COURT. No. It is well enough, however, at the beginning of the week to have attention called to the landmarks.

By Mr. BLISS :

Q. [Resuming, and submitting a paper to the witness.] Please look at that letter and see if you received it.—A. [After examining the same.] Yes, sir.

Mr. BLISS. I will now read it :

M. C. RERDELL, *Agent, p. o. box 706*—

Mr. TOTTEN. [Interposing.] Your honor wanted me to make a special objection, and I do it as to this paper, not because it has anything in it, but because it is dated in May, 1879, long before the date specified in the indictment.

The COURT. The objection is overruled.

Mr. BLISS. [Reading:]

WASHINGTON, D. C., *May 5th, 1879.*

NEPHI JOHNSON, Esq.,
Johnson, Utah :

DEAR SIR : I beg to inclose you new contracts in duplicate for carrying mails between Toquerville and Adairville, which please sign and return to me here. This new contract becomes necessary on account of the dissolution of the firm, and for the further reason that all contracts made by this man in Colonel Peck's name are made without his knowledge or authority.

We do not propose to cut down your prices at all, but, on the contrary, to protect your interests. I personally guarantee that all obligations under this contract shall be fulfilled ; and as to my responsibility, I can refer you to Barbour Lewis, J. S. Black, and Hon. S. P. Luckey, of Salt Lake ; also to Kountze Bros., bankers, New York City ; Citizens' National Bank and Middleton and Co., bankers, Washington, D. C. ; to Senators Jones and Sharon, of Nevada ; Mr. Cannon, of Utah, &c.

And in addition to this, you can file your new contract in the Post-Office Department and get your pay direct ; and, if you wish, you may send your copy direct to the department, and not release the old contract until the department gives you notice that the United States will pay you the sums agreed upon in the new one.

Hoping to hear from you at once, I am, truly, yours,

S. W. DORSEY,
Assignee.

In the lower left-hand corner, in pencil, the following is written :

You can also inquire of M. Salisbury about me.

S. W. D.

Q. [Resuming.] I see in some of these letters there is a statement of your having written to Mr. Cannon with reference to time schedule ; did you in fact write to Mr. Cannon ?

Mr. INGERSOLL. I object to that.

Mr. BLISS. I do not want the subject of the letter. I do not want anything in the letter. I merely want the fact.

Mr. INGERSOLL. I object to the fact.

Mr. BLISS. If he did write to Mr. Cannon we will subsequently, by other evidence, prove the letter.

The COURT. [To Mr. Bliss.] You can ask the question.

Q. [Resuming.] Did you write to Mr. Cannon ?—A. There was another man wrote for me.

Q. Who was the other man ?

Mr. INGERSOLL. I object to that.

The COURT. Oh, that is a preliminary fact.

A. W. D. Johnson.

[The letter just read by Mr. Bliss was submitted to the clerk to be marked for identification, and was by him marked 34 C, and submitted to the jury for inspection.]

Mr. WILSON. I will admit that that signature is Dorsey's handwriting. I don't think the body of the letter is.

Mr. INGERSOLL. I will admit it is Dorsey's letter, whether it is in his handwriting or not, because it is a good letter.

Mr. TOTTEN. It is sanctified because it comes from the file office.

Mr. BLISS. [To Mr. Wilson.] I understood you to say that no question of the signature being Dorsey's, but that the body letter was not.

Mr. WILSON. I do not know his handwriting. I understand gersoll to say that that is Mr. Dorsey's letter.

Mr. BLISS. The signature and the pencil writing at the end mitted as being the handwriting of Mr. Dorsey.

Mr. INGERSOLL. He refers in that note to Mr. Salisbury.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Your name is Nephi Johnson, I believe?—A. Yes, sir.

Q. Where do you reside?—A. I reside at Johnson, Kane Utah.

Q. That is on the line of this route?—Yes, sir.

Q. You made application to these parties, I believe, for the tract for carrying the mail over this route?—A. Yes, sir; I did.

Q. Did you have any other mail route that you were carrying time?—A. I was carrying the same route at the time I made plication.

Q. What other one were you carrying?—A. I was carrying the from Marysville, Utah, to Kanab; it is run as route 41122.

Q. You had route 41120 also?—A. Yes, sir.

Q. And 41120 was discontinued, and the service was put 41119?—A. Yes, sir.

Q. When did that happen?—A. The order was to take effect 1, 1879.

Q. That changed the mail from 41120 over to 41119. It was largely petitioned for, was it not?—A. No; I don't think there great many signed the petition for it?

Q. You were opposed to it, I believe?—A. Yes, sir.

Q. You resisted that?—A. Yes, sir.

Q. But the department put it over there?—A. Yes, sir.

Q. You were dissatisfied with that?—A. Yes, sir; I was diss with it.

Q. You helped to get up these petitions for the increase of the ice and the expedition of the service, did you not?—A. Yes; I to get up several petitions.

Q. That is rather a forbidding sort of country out there, and few persons in it, is it not?—A. Yes, sir; Southern Utah is rather country.

Q. Very sparsely settled, is it?—A. There are the settlements are mentioned on this route.

Q. And nothing intermediate?—A. No, sir.

Q. No people going in there, or anything of that sort?—A. identical country this route runs over there are a few settling settlements.

Q. Are they generally Mormons that are going in there?—A. Majority of them.

Q. You belong to that organization, I believe?—A. Yes, sir.

Q. You live at two places along this line, do you not?—A. I have a ranch and I live there at Johnson.

Q. You have two residences along this line, have you not?—A. Yes, I have a place at Kanab.

Q. You have two families; one at one place and another at another; is that correct?—A. No, sir,

Q. Wherein is it incorrect?—A. Because I haven't.

Q. You will have it that way, will you? Well, it is all one family but living in two places. That is the way is it?—A. No, sir.

Q. Well, I understood differently. You explain it to the jury.—A. My family all lives in one place.

Q. Now, in the the first place, you took this route cheaper than anybody else could carry it; did you not?—A. Yes, sir; I suppose I did, or I would not have got it.

Q. And you took it cheaper than anybody else could carry it, because you had special facilities for carrying the mail?—A. Yes, sir.

Q. [Submitting a paper to witness.] I want to show you this letter, and see if you wrote it?—A. [After examining the same.] Yes, sir.

Q. That is yours?—A. Yes, sir.

Q. [Submitting another paper to witness.] Will you please look at that signature to that petition, and see if you wrote that?—A. [After examining.] Yes, sir.

Q. That is your signature?—A. Yes, sir.

Q. Are you acquainted with the handwriting of Delegate Cannon?—A. I think I could recognize it.

Q. [Resubmitting paper to witness.] Now, look at that, and see if that is his handwriting on that petition?—A. [After examining same.] I should say it was, sir.

Q. Now, there was a very insignificant amount of mail passing over this route, as I understand your testimony, was there not?—A. No, sir; there was considerable mail passed over it.

Q. Sometimes a hundred pounds and sometimes ten pounds.—A. Yes, sir; when I first commenced to carry it. But the mail gradually increased, as there was more service put on, the mail increased.

Q. The mail grew as the service grew?—A. Yes, sir.

Q. Now, I find in this petition, which you say you signed—

This is also the main thoroughfare through Southern Utah via Lee's Ferry to Sunset, Arizona.

Is that true?—A. Yes, sir.

Q. [Continuing to quote from petition]—

Many rich mines are being found and developed, and the country is fast filling up, which demands more mail facilities and a change of schedule from tri-weekly to daily service, seven times a week and running time to forty-eight hours.

Is that true?—A. At the time that was written it was supposed to be true. There was a mining excitement there, and there were a thousand men right in that country who supposed they had found rich silver mines.

Q. This was an honest petition when it was sent in. This is addressed to the Postmaster-General:

Your prompt and favorable consideration of this matter will greatly promote the growth and prosperity of this part of the country, and we, your petitioners, will ever pray.

You believed all that when you signed this, did you not?—A. Yes, sir.

Q. These other people who signed this were good, honest people, were they not?—A. Yes, sir; I believe them to be.

Q. Respectable citizens?—A. Yes, sir.

Q. And you intended, when you forwarded this petition, to have the Post-Office Department influenced to grant this prayer; that was your purpose in getting it up, was it not?—A. Yes, sir; we wanted more service there.

Q. You thought it was actually needed?—A. Yes, sir.

Q. And it needed all the service that was put on there, did it not?—A. Yes, sir.

Mr. WILSON. Mr. Johnson, I will not trouble you with these other petitions, for they are of like character.

Mr. BLISS. That petition about which he has just been testifying is marked 6 C.

By Mr. WILSON:

Q. [Resuming.] Now, I have a petition here marked 7 C. [Submitting same to witness.] Look at that and see if that is Mr. Cannon's indorsement upon that petition.—A. [After examining the same.] Yes, sir.

Mr. WILSON. One which I believe you did not read, Colonel Bliss. Mr. Cannon indorsed this petition:

The indorsement which I make on the accompanying petition I make on this, and hope it will be in the power of the department to grant your request.

GEORGE Q. CANNON.

The indorsement on this petition you did not read, Colonel Bliss.

Mr. BLISS. We did not recognize the signers on that, I believe.

Mr. WILSON. This petition is dated the 24th of May, 1879. In it I find this language:

We have the honor to submit to your favorable consideration the fact—

It is addressed to the Postmaster-General—

that the mail service on route 41119, from Toquerville to Adairville, Utah, is entirely insufficient for the wants of those now receiving their mail by this route, and to earnestly request that the service be increased to a daily mail, seven times a week, and on a less schedule than now carried, that is to say, about forty-eight hours. This increase is absolutely necessary to accommodate the great number of persons supplied, and to dispose of the large amount of mail matter now carried over this route.

By Mr. WILSON:

Q. Was that petition true?—A. Well, it was supposed to be true at the time, I suppose.

Q. The petition goes on:

The country is already thickly settled along this route, besides a large and intelligent immigration constantly pouring into this country.

Very respectfully.

Signed by this large number of persons. Do I understand you to say you recognize these names as of persons who live along the route?—A. Yes, sir.

Q. Are they respectable people?—A. Yes, sir.

Q. Truthful people, as far as you know?—A. Yes, sir.

Q. You say this petition was true?—A. Well, sir, it was sent here at the same time the other was, according to the date of it, and it was supposed to be true, what is stated in the petition, at the time.

Q. What do you say about it now; is it true or not?—A. Well, sir, the mines did not prove to be good, and the miners have gone away of the route.

Q. At the time this expedition was petitioned for it was supposed that they had made great mineral discoveries there, and the country was full of people.—A. Yes, sir; that spring.

Q. It was in consequence of people coming in there that this additional service had become necessary?—A. Yes, sir.

Q. And your people honestly petitioned for it and got it?—A. Yes, sir.

Q. Now, after a while you became a little dissatisfied at the condition of things there, did you not?—A. Yes, sir; I was dissatisfied.

Q. Did you file your subcontract in the Post-Office Department—A. I did; I think it was filed last January.

Q. Up to last January the Post-Office Department, excepting so far as you may have written letters, had no knowledge that you had any subcontract at all, had they?—A. No, sir; I think not.

Q. They expedited this schedule until you were required to make the trip in thirty-three hours I believe?—A. Yes, sir.

Q. You thought that was too fast, did you?—A. Yes, sir.

Q. In other words, you could not, with the stock you put on the route, carry the mail in thirty-three hours?—A. I did carry it, though.

Q. In thirty-three hours?—A. Yes, sir.

Q. But you got into trouble about not carrying it according to the requirement of the contract, didn't you?—A. Yes, sir; there was a few failures.

Q. There were more than a few failures, were there not?—A. No, sir. There was some irregularity in mail bills, and I was charged up with failures when there were no failures.

Q. That was a matter of controversy between you and the inspection division of the Post-Office Department?—A. Yes, sir.

Mr. BLISS. I thought you just said the Post-Office Department did not know him at all.

Mr. WILSON. The Post-Office Department knew the contractor, and the Post-Office Department knew that the mail was not being carried from the reports of the postmasters at the terminal points.

Mr. MERRICK. The Post-Office Department had nothing to do with him, you say.

Mr. WILSON. It did not have anything to do with paying him.

The WITNESS. That was the trouble.

Q. They reported you as not carrying the mail according to schedule, did they not?—A. There was to be mail bills sent by every mail, and when they kept any back it was reported.

Q. And in consequence you were fined and deductions were made from you?—A. Yes, sir.

Q. That is so, is it not?—A. Yes, sir.

Q. So in the second quarter of 1879 you were fined \$86.58, were you not?—A. Yes, sir; I was fined that; but it was not for failures.

Q. You were fined that much?—A. Yes, sir.

Q. Then in the third quarter of 1879 you were fined \$540.42, were you not?—A. Yes, sir.

Q. And in the fourth quarter of 1879 you were fined \$260.01?—A. Yes, sir.

Q. And in the first quarter of 1880 you were fined \$947.02?—A. I was not to blame for that.

Q. I am not talking about that. I am simply asking whether such was the fact.—A. Yes, sir.

Q. That was because of your non-performance of this contract which you as subcontractor had undertaken to perform, was it not?—A. No,

sir. As I told you I made some failures, and sometimes the mail bills failed to arrive, and therefore I was fined.

Q. But the postmasters at the terminal points made reports against you to the inspection division of the Post-Office Department, did they not?—A. They were compelled to do so.

Q. They did do it, did they not?—A. Yes, sir.

Q. If you had carried that mail on time they would not have made these complaints against you?—A. I did carry it on time most of the time. The mail bills were left from one mail to another.

Q. Did you always get in on time?—A. There was a few failures. I don't say I always did.

Q. The failure was on account of the inadequacy of your equipment of the route, was it not?—A. No, sir; it was on account of storms and snow.

Q. If you had had a larger equipment possibly you might have gotten through?—A. [No answer.]

Mr. MERRICK. He has not answered your last question.

Mr. WILSON. I know. He doesn't answer half the time.

Mr. MERRICK. He should answer that question.

Q. [Without waiting for the last to be answered.] You were traveling your horses twenty miles?—A. Yes, sir; twenty miles and back.

Q. That was winter and summer, was it not?—A. Yes, sir.

Q. You undertook to have your horses travel twenty miles a day and back?—A. No, sir; I am mistaken. Twenty miles is what they ran, and others took them back.

Q. At the end of every twenty miles there was a relay and so on through?—A. Yes, sir.

Q. And then you had other horses to come back?—A. Yes, sir.

Q. How long is this route?—A. One hundred and twenty-two miles.

Q. Then you had a station every twenty miles, had you?—A. No, sir; not exactly.

Q. How did you have them?—A. The first station on the route was at Virgin City. The mail came up eight miles and went back again.

Q. [Handing witness map of route.] Please mark your stations on that map?—A. [Referring to map.] Here is Toquerville. [Indicating.] And Virgin City is eight miles from there. The mail came up there with one horse and went back again. That was the first station. Then the next station was at a place midway between Virgin City and Winsor; and the next was at Winsor.

Q. That is station number 3?—A. Yes, sir.

Q. Where is the next one?—A. At Kanab.

Q. That is number 4. Where is the next?—A. Johnson.

Q. That is number 5. Now where is the next?—A. Half way between Johnson and Pahreah. They came out from Pahreah and made a change.

Q. Then Pahreah is number 7?—A. Yes, sir.

Q. You took one horse from Toquerville to Virgin City?—A. Yes, sir.

Q. Then from Virgin City to station number 2, how many horses did you have?—A. I had two.

Q. Did you drive them to a wagon?—A. No, sir.

Q. How did you carry the mail?—A. On horseback.

Q. Did you lead the horse?—A. No, sir.

Q. Did you have two carriers?—A. Two—one horse, and then one to go back with.

Q. You carried the mail with one horse from Toquerville down to

station number 2?—A. And from Virgin City down to here [indicating] I carried the mail with one horse.

Q. How many horses did you use from station number 2 to Winsor?—A. One.

Q. And from Winsor to Kanab?—A. One at a time, and had another to lay off.

Q. From Kanab to station 5 at Johnson?—A. One at a time. Then I had an extra horse at this place here. [Indicating.] I had three horses in one station there. [Indicating.]

Q. So you had simply the number of horses that was necessary to actually ride a horse from one station to the next during one day, and the next day you had that same horse come back, did you?—A. Yes, sir.

Q. Or, did a horse lay over a day?—A. On the worst part of the route there, at the first start, I had three horses at the first station out from Virgin City.

Q. Who took care of these horses while they were there?—A. There was a man living at that place that took care of them at the first station.

Q. You kept him employed for that purpose?—A. No; he was living there. Well, he fed my horse.

The COURT. [After a pause.] Are you through with this witness?

Mr. WILSON. As soon as I identify two or three letters.

Mr. HENKLE. While Judge Wilson is looking up that question I desire, your honor, to ask the witness one or two questions.

Mr. MERRICK. No.

Mr. HENKLE. They appertain to my client exclusively.

Mr. MERRICK. I object. They stopped me the other day, and the rule was applied to me.

The COURT. The rule was settled that as to general matters applicable to all the defendants one examination alone would be allowed, but if there was any special matter in which some particular defendant was exclusively interested the witness might be examined by other counsel.

Mr. MERRICK. I thought your honor had settled that even in that case it must be done through the examining counsel.

The COURT. No. [To Mr. Henkle.] You can ask him.

By Mr. HENKLE:

Q. I understood you to say that in the early part of July, 1879, Mr. J. W. Dorsey came out there?—A. Yes, sir.

Q. And that you had a conversation about the route and your contracts?—A. Yes, sir.

Q. You said, as I understood you, that in a conversation he mentioned the parties who were interested with him.—A. He mentioned the names of parties that had been bidding for mail routes; yes, sir.

Q. Did I understand you to say that he mentioned the names of parties who were interested with him at that time?—A. Yes, sir; that is the way I understood it.

Q. At that time?—A. That is the way I understood it; and they had been bidding for mail routes.

Q. You mentioned among the names of the persons indicated by him the name of Mr. Miner.—A. Yes, sir; he mentioned Mr. Miner's name.

Q. As interested with him at that time?—A. That is the way I understood it; interested in mail routes.

Q. Now, you say that you received from S. W. Dorsey, on the 5th of

May, 1879, some months prior to this time when you were talking with John W. Dorsey, a letter, in which he stated that the firm was dissolved and inclosed to you a new contract with him alone. How do you explain that?—A. I don't know; I cannot explain it.

Q. Do you say that John W. Dorsey was there and talked with you about Rerdell, and Miner, and Peck, as interested with him after you received this letter of May 5, 1879, from S. W. Dorsey?—A. He mentioned the names of these men and said they had bid for contracts and had quite a number of them.

Q. Just answer my question if you please; you say that this conversation with John W. Dorsey was in the early part of July, 1879?—A. Yes, sir.

Q. You say also that you received from S. W. Dorsey, on the 5th of May, 1879, a letter inclosing a new contract with him alone, in which he said that this was necessary because—

Mr. BLISS. [Interposing.] The new contract was not with him alone.

Mr. HENKLE. Who was it with?

Mr. BLISS. It is in evidence. Look at it.

Q. [Continuing.] In which he said, at all events, that the firm had dissolved, and that this contract became necessary because of that fact. I want to call your attention to this, and ask you whether you are not mistaken as to the time when John W. Dorsey was there?—A. No, sir; it was in July.

Mr. BLISS. Here is the new contract. [Submitting paper to Mr. Henkle.]

Q. Do you adhere to your statement that John W. Dorsey was there after the 5th of May, and after you received this letter from Senator Dorsey?—A. Yes, sir.

Q. And that, at that time in July, 1879, he told you that Miner was interested with him in that contract?—A. No, sir; not in that way; he said that they had bid for mail routes; mentioned these men's names, and said they had got a great many mail routes.

Q. But he did not indicate to you Miner as a party interested with him in that route at that time?—A. No, sir; he did not.

Q. Did he not indicate to you that he was not interested at that time?—A. Not that I recollect. He mentioned the names to me and said they had been bidding.

Q. Did you not ask Mr. Dorsey how so many persons came to be interested in that contract or that route?—A. I might have asked him and I might not; I don't recollect.

Q. Didn't Mr. Dorsey tell you at that time that they had divided the routes, and that Mr. Miner had no further interest in it?—A. He might have done so, but I do not recollect it.

Q. You do not undertake to say that he did not say so?—A. No, sir: I would not say that he did not say so.

The COURT. General Henkle, I excluded the evidence of this witness so far as it related to Mr. Miner.

Mr. HENKLE. No, your honor; so far as Vaile was concerned.

The COURT. As I recall it, there was nothing in the testimony to connect Mr. Miner with the matter.

Mr. HENKLE. It was Vaile that your honor mentioned. Your honor will remember that I reserved an exception. Does your honor now exclude the testimony as to Mr. Miner?

The COURT. Certainly; if Miner was not connected by any previous evidence with this contract, his declaration as to Miner would not affect Miner.

Mr. HENKLE. Then the testimony is excluded as to Miner ?

The COURT. Yes.

Mr. HENKLE. That is all.

The COURT. I intended to be so understood before.

By Mr. WILSON :

Q. I called your attention to the deduction of \$540.42 in the third quarter of 1879. The contractor paid half of that, did he ?—A. Yes, sir.

Q. He settled one-half ?—A. Yes, sir ; on account of route 41120.

Q. Now, in the first quarter of 1880, there was \$947.02. What did the contractor do about that ?—A. He paid me \$500.

Q. [Submitting a paper.] Now, on the strength of that, look at that letter and say whether or not you were entirely satisfied with what the contractor had done for you in that regard.—A. Yes, sir ; I do not deny that letter.

Q. Now look at this one [submitting another letter].

The COURT. These are not for the purpose of cross-examination ?

Mr. WILSON. I am simply identifying them for the purpose of introducing them in evidence after a while if I should find occasion for using them.

Q. Look at that letter [submitting a letter] and see if it is your signature.

[The witness examined the letter without answering.]

The COURT. Don't take so long to identify your own signature.

A. Yes, sir.

Q. Look at these [submitting a number of letters] and put your initials on the back of each one that is yours.

Mr. BLISS. If they are to be marked for identification, or anything of that kind, we want to see them, in order to cross-examine.

The COURT. This is for the purpose of clearing the contractor from any appearance of oppression or injustice on the part of a subcontractor by allowing him to pay all the fines himself.

Mr. BLISS. We are not objecting to the letters, because we do not know what they are. I simply say that if they mark them now for identification, and then by and by want to put them in when the witness may have gone home, we shall have no chance for cross-examination upon that subject. I do not care when it is done, but we must have the right to cross-examine before they are offered ; that is all.

Mr. WILSON. I simply want to identify them.

Mr. BLISS. Is it proper that they should be marked for identification without our having any opportunity to cross-examine on the question of identity ?

The COURT. The question of marking is not a question of evidence.

Mr. BLISS. But after they have been marked for identification the next thing will be a claim that they have a right to go in.

The COURT. They cannot go in without an opportunity for cross-examination. They are not admitted yet in the case. [After a pause.] Do you offer them in cross-examination now ?

Mr. MCSWEENEY. Yes.

Mr. WILSON. Those are matters relating to Mr. Dorsey, and I am instructed to say that they are now offered.

The COURT. Then submit them to the other side.

Mr. WILSON. The other side can take them and use them, and we will put them in evidence now.

Mr. BLISS. I do not urge you to put them in evidence, but I simply

say we must have an opportunity of cross-examination. [Paper submitted to counsel for Government.] While Mr. Merrick is looking at these papers, allow me to refer back to what your honor said about there being no testimony to touch Miner. Vaile's contract, dated the 1st of April, 1878, is signed "John M. Peck, by John R. Miner." It is in evidence. The original contract——

The COURT. [Interposing.] That is withdrawn.

Mr. BLISS. No, sir; I was going to say that is the original contract. It is on paper headed "John W. Dorsey & Co.," and is the contract with Vaile. It was subsequently withdrawn, but certainly shows his relation to the business. Then, also, the first contract with Johnson is a contract with Peck, but provides that he is to carry the employés of Miner, Peck & Co.; that he is to send all collection orders to be returned or accounted for to Miner, Peck & Co., and to forward the duplicates of all reports of service to Miner, Peck & Co. It is made on the paper of Miner, Peck & Co. I submit that there is some evidence to show Mr. Miner's relation to the business. On the back is the indorsement:

Subcontractors please remember.

And then it goes on and states that they must forward to John W. Dorsey & Co., in one case, and in the other forward to Miner, Peck & Co.

The COURT. I do not mean to exclude by the ruling I have already made those items as evidence in the cause to be used hereafter. But so far as the admission is made by John W. Dorsey on this particular occasion as to this particular route, I think there is not enough in the case to establish Miner's connection with the others as to the particular route, or to authorize the admissions of John W. Dorsey to bind Miner. Upon the whole case these are items to be taken into consideration by the jury and by the court hereafter; but so far as it relates to the evidence on this particular occasion I do not think there is enough to authorize the court to say that John W. Dorsey was the agent of Miner to bind Miner by the admission of John W. Dorsey on that occasion. I cannot say that there is enough for that purpose as to this particular route.

Mr. BLISS. We do not care to claim that at this stage of the case. When I first offered it I told your honor we made no such claim as that.

The COURT. You see that if the declarations of John W. Dorsey on this occasion, so far as related to Miner in connection to this particular route, are to be received in evidence, they must be received in evidence upon the ground that John W. Dorsey and Miner were so associated in regard to this particular contract that the admissions of Dorsey would bind Miner. I do not think there is enough for that purpose. But as to the general charge of conspiracy upon the whole case, these are facts which may be taken into consideration hereafter.

Mr. MERRICK. I did not want to bring that question up just at this time. I understood the evidence in this way, if your honor please: John W. Dorsey had a conversation with this contractor in reference to a contract, and the conversation is a part of the *res gestæ* making of the contract. We asked for the whole conversation—that was all—in that attitude and in that relation to the contract, and nothing else.

The COURT. You have no right to bring in the whole conversation except so far as it related to the persons who were in some way connected with this contract.

Mr. MERRICK. The conversation all comes in.

The COURT. But so far as it related to Miner it was a conversation which Miner could not be bound by.

Mr. MERRICK. So far as this route is concerned. Your honor states that so far as this particular route is concerned what Dorsey said cannot bind Miner. That is all.

Mr. BLISS. We will be glad to have Mr. Wilson introduce these letters that he proposes to offer.

Mr. WILSON. You will be gratified then.

Mr. BLISS. We would like to have them introduced now.

Mr. WILSON. I would like to have the clerk mark them so that we can put them in when we come to our side of the case.

Mr. BLISS. You do not propose to offer them now?

Mr. WILSON. I should have done so if it had not been for what you said. As it is I will not do it.

The COURT. You do not propose to offer them now?

Mr. WILSON. No, sir.

[The papers were handed to the clerk and by him marked for identification.]

By Mr. BLISS :

Q. Where is Sunset in Arizona?—A. I do not know.

Q. It is referred to in the petition I see as a route leading to Sunset?—A. Well, sir, it is a station on the Southern Pacific.

Q. How far off from the end of this route?—A. It is said to be about three hundred miles.

Q. These petitions asked for a forty-eight-hour schedule, did they not?—A. Yes, sir.

Q. And you got thirty-three, did you not?—A. Yes, sir.

Q. And when they were questioning you as to whether you performed the service in the time required, and you answered that you did, you meant in thirty-three hours?—A. Yes, sir.

Q. Did you ever circulate a petition for thirty-three hours' time?—A. Not that I know of.

Q. Did you ever know of any petition for thirty-three hours' time being circulated out there?—A. No, sir; I did not.

Q. Did you ever hear of any?—A. No, sir.

Q. You specified the number of stations you had, and the number of horses you had at each. At what stage of the contract was that? How many trips were you then making, and in what time?—A. I was making seven trips a week.

Q. And in thirty-three hours' time?—A. Yes, sir.

Q. Did Peck, or anybody claiming to act on behalf of him, of any of the other of these defendants, ever inquire of you as to the number of men and horses that would be needed on an increased number of trips and a decreased schedule of time?—A. Not that I recollect.

Mr. TOTTEN. There is no evidence here, your honor, to show that Mr. Johnson knew any more about that subject than any other man.

Mr. BLISS. Perhaps not.

Mr. TOTTEN. I suggest that this is entirely immaterial.

The COURT. It does not seem to me to be immaterial.

Mr. TOTTEN. It is immaterial whether they inquired of him or not.

Mr. MERRICK. He was the carrier on this particular route, then.

The COURT. He was acquainted with everybody on the route, and they had written to him to get up the petition.

Mr. BLISS. Peck swore to a fact. How did he know the fact?

Q. Was Mr. Peck ever out there to your knowledge?—A. No, sir.
 Mr. TOTTEN. Hadn't you better ask him whether Peck didn't
 somebody else?

Mr. MERRICK. You can ask him that.

At this point (12 o'clock and 30 minutes p. m.) the court took
 usual recess.

AFTER RECESS.

Mr. BLISS. I offer the receipt dated Washington, November 20, 1878
 for warrant 12620.

Received the above-mentioned warrant November 20, 1878.

JOHN M. PECK,
Contractor,

Mr. TOTTEN. How much was it for?

Mr. BLISS. It does not appear in the receipt.

Mr. WILSON. Where is the warrant?

Mr. BLISS. I will offer it.

Mr. TOTTEN. Let us proceed in order.

Mr. BLISS. We are proceeding as we have been doing. The receipt
 I have not produced the warrant, though I am perfectly willing to
 so, is that Mr. Sleman, the clerk who has the warrants in charge
 sick in bed. I have here the physician's certificate to the fact
 have sent to the department for another clerk to come here and
 those warrants, and I am trying to occupy the time in this way in
 absence of a witness.

JUNE 29, 1880

Received the above-mentioned warrants, 14279 and 14280.

H. M. VAILE,
Contractor
 By JOHN R. MINER,
Attorney

[The two papers last read were marked respectively, 35 C and 36

MAY 5, 1881

Received the above-mentioned warrant, 3904.

J. W. BOSLER,
Assignee, for Contractor

Each of these receipts is preceded by a printed form saying, "H
 with find warrant," and below that is the receipt.

[The paper last read was marked by the clerk 37 C.]

OCTOBER, 30, 1881

Received the above warrants 11244 and 11245.

J. W. BOSLER, *for Contractor*

[The paper last read was marked by the clerk, 38 C.]

FEBRUARY 4, 1882

Received the above warrant 2055.

J. W. BOSLER, *for Contractor*

[The paper last read was marked by the clerk 39 C.]

APRIL 19, 1882

Received the above warrant 4836.

J. W. BOSLER, *for the Contractor*

[The paper last read was marked by the clerk 40 C.]

The notice of the next is dated February 7, 1882. The receipt
 without date.

Received the above-mentioned warrant, 304.

M. C. RERDELL, *Contractor*

[The paper last read was marked by the clerk 41 C.]

Mr. WILSON. 1882.

Mr. BLISS. Yes, sir.

Mr. WILSON. What on earth have we to do with that?

HENRY W. WHEELER, sworn and examined.

By Mr. BLISS :

Question. What is your business?—Answer. I am pay clerk in the Sixth Auditor's office.

Q. In the same office with Mr. Sleman?—A. Yes, sir.

Q. Mr. Sleman is not there to-day?—A. No, sir; he is sick.

Q. Have you brought with you the warrants on route 41119?—A. I have, sir.

Q. From Toquerville to Adairville?—A. Yes, sir. [Producing papers.]

Q. These are the warrants?—A. Yes, sir.

Mr. BLISS. The first is dated November 20, 1879, for \$77.06, to the order of John M. Peck, signed by Postmaster-General Key and Auditor McGrew. Address lock-box 714, city. Indorsed: Pay H. M. Vaile, treasurer, or order. John M. Peck. H. M. Vaile, treasurer. Annexed is an account headed :

STAR SERVICE.

The United States, debtor, to John M. Peck, for carrying mails in Utah Territory, route 41119, specified at \$219 per quarter.

[The paper last read was marked by the clerk 42 C.]

Warrant 14280, dated January 29, 1879, for \$751.22 to H. M. Vaile, assignee of John M. Peck. Signed by Postmaster-General Key and Auditor McGrew, and endorsed by Vaile as assignee of John M. Peck. An account annexed for route 41119, \$292, as per contract, and \$584 per order No. 8990, from November 1, 1878. Annexed to that is an order dated November 1, 1878.

The Auditor of the Treasury for the Post-Office Department will please pay H. M. Vaile the sum due out of any moneys due me on routes 41115 and 41119 in the Territory of Utah, for the quarter ending December 31, 1881.

Signed John M. Peck, contractor, and witnessed by M. C. Rerdell and Harvey G. Gray, postmaster at Apache, Territory of New Mexico.

[The set of papers last read was marked by the clerk 43 C.]

Warrant 2986, dated April 23, 1879, for \$948. Pay to Lewis Johnson & Co., assignees of John M. Peck, \$948. Signed by Postmaster-General Key and Auditor McGrew. An account annexed in the same form on route 41119 for \$876. Annexed also the following order:

CHICO SPRINGS, NEW MEXICO, November 1, 1878.

Pay to H. M. Vaile, or order, the sum of the amount due out of any moneys due me on routes 41115 and 41119, in the Territory of Utah, for the quarter ending March 31, 1879.

Signed John R. Peck, contractor, and witnessed by M. C. Rerdell and Harvey G. Gray, postmaster of Apache, New Mexico.

Annexed, also, a notice signed by J. L. French, acting Second Assistant Postmaster-General, dated March 8, 1879, that the subcontract of H. M. Vaile at the rate of \$3,504 per annum, commencing January 1st, 1879, has been filed.

[The set of papers last read was marked by the clerk 44 C.]

Number 6286, dated January 24, 1879, for \$861.42. Pay Middleton & Co., assignees of John M. Peck. Signed by Thomas J. Brady, Acting

Postmaster-General, and Auditor McGrew. An account annexed showing on route 41119, \$876. Annexed is the order of Peck :

WASHINGTON, D. C., April 1, 1879.

The Auditor of the Treasury for the Post-Office Department will please pay to W. Dorsey, or order, the sum of \$876, out of any moneys due me on route 41119, Toquerville to Adairville, Utah Territory, for the quarter ending June 30, 1879.

JOHN M. PECK,
Contract

Witnessed :

LATHROP R. BACON,
HARVEY G. GRAY,
Postmaster of Apache, New Mexico.

On the back it is indorsed : Pay to the order of Middleton & Co. W. Dorsey.

[The set of papers last read was marked by the clerk 45 C.]

No. 9978, dated November 3d, 1879, for \$3,087. Pay Middleton & Co., assignees of John M. Peck. Signed by D. M. Key and J. M. McGrew. Indorsed by Middleton, assignee of Peck. Annexed is an account showing to be due on route 41119, per contract \$876; \$4,345.35 net per order 5362, from August 1, 1879; less, per order 6589, from August 1, 1879, \$262.38. One month's extra pay, \$131.91, \$3,496.23; \$131.91 footed up, \$3,628.14. Order dated July 7, 1879. Pay to S. W. Dorsey, or order, the sum of \$3,389.37 out of any moneys due me on route 41119 from Toquerville to Adairville, in the Territory of Utah, for the quarter ending December 3d, 1879. Signed by John M. Peck, contractor, and witnessed by Lathrop R. Bacon and Harvey G. Gray, postmaster at Apache, New Mexico. Indorsed, S. W. Dorsey.

[The set of papers last read was marked by the clerk 46 C.]

Number 2496, dated February 21, 1880. Pay to J. W. Bosler, assignee of John M. Peck, \$4,711.82. Signed by Postmaster-General and S. B. Lilly, acting auditor. An account annexed showing on route 41119, amount due, \$4,827.83.

OCTOBER 7, 1880.

Pay S. W. Dorsey, or order, the sum of \$4,827.83 out of any moneys due me on route 41119, Territory of Utah, for the quarter ending December 31, 1879.

JOHN M. PECK,
Contract

Witnessed :

LATHROP R. BACON,
HARVEY G. GRAY,
Postmaster at Apache, New Mexico.

Indorsed : Pay to J. W. Bosler, or order. S. W. Dorsey. J. W. Bosler, Carlisle, Pennsylvania.

[The set of papers last read was marked by the clerk 47 C.]

No. 3904, dated May 1, 1880. Pay to J. W. Bosler, assignee of John M. Peck, \$4,019.29. Signed by Postmaster-General Key and Acting Auditor Lilly. An account annexed on route 41119 for \$4,827.83, as per contract. Also an order without date :

Pay to S. W. Dorsey, or order, the sum of \$4,827.83, out of any moneys due me on route 41119, in the Territory of Utah, for the quarter ending March 31, 1880.

Signed by John M. Peck, and witnessed by Lathrop R. Bacon and Harvey G. Gray, postmaster at Apache, New Mexico. Indorsed : Pay to the order of J. W. Bosler. S. W. Dorsey.

[The set of papers last read was marked by the clerk 48 C.]

No. 9404, dated August 18, 1880. Pay to J. W. Bosler, assignee

John M. Peck, \$4,921.83. Signed by James M. Tyner, Acting Postmaster-General, and Z. B. Lilly, Acting Auditor. An account annexed for \$4,827.83. An order annexed without date :

Pay to S. W. Dorsey \$4,827.83, out of any money due me on route 41119, in the Territory of Utah.

Signed by John M. Peck, and witnessed by Lathrop R. Bacon and Harvey G. Gray. Indorsed by J. W. Bosler, Carlisle, Pennsylvania.

[The set of papers last read was marked by the clerk 49 C.]

No. 11244, dated October 25, 1880. Pay to J. W. Bosler, assignee of John M. Peck, \$4,972.87. Indorsed by Bosler, as assignee of John M. Peck. Annexed an account of John M. Peck, on route 41119, for \$4,827.83. Annexed an order :

Pay to J. W. Bosler, or order, the sum of \$4,827.83, out of any moneys due me on route 41119, in the Territory of Utah, for the quarter ending December 31, 1880.

Signed by John M. Peck and witnessed by Lathrop R. Bacon and Harvey G. Gray, postmaster at Apache, New Mexico.

[The set of papers last read was marked by the clerk 50 C.]

No. 2085, dated January 29, 1881. Pay to J. W. Bosler, assignee of John M. Peck, \$4,827.83. Signed by Horace Maynard, Postmaster-General, and Auditor McGrew. An account annexed showing \$4,847.83 due as per contract. Annexed is an order dated October 1, 1880 :

Pay to J. W. Bosler, or order, the sum of \$4,827.83, out of any moneys due me on route 41119, Territory of Utah, for the quarter ending December 31, 1880.

Signed by John M. Peck, contractor, and witnessed by Lathrop R. Bacon and Harvey G. Gray, postmaster at Apache, New Mexico.

[The set of papers last read was marked by the clerk 51 C.]

No. 48036 dated April 16, 1881. Pay to J. W. Bosler, assignee of John M. Peck, \$4,827.83. Signed by T. L. James, Postmaster-General, and J. M. McGrew, Auditor. Annexed is an account for carrying the mail on route 41119, showing due \$4,827.83 as per contract. Annexed an order dated January 4, 1881.

Pay to J. W. Bosler, or order, \$4,827.83, out of any money due me on route 41119, in the Territory of Utah, for the quarter ending March 31, 1881.

Signed by John M. Peck, contractor, and witnessed by Lathrop R. Bacon and Harvey G. Gray, postmaster at Apache, New Mexico.

[The set of papers last read was marked by the clerk 52 C.]

No. 585, dated July 22, 1881. Pay to J. W. Bosler, assignee of John M. Peck, \$4,827.83. Signed by T. L. James, Postmaster-General, and J. H. Ela, Auditor. Annexed is an account on route 41119, showing \$4,827.83 due. Annexed also an order dated June 30, 1880 :

Pay to J. W. Bosler, \$4,827.83, out of any moneys due on route 41119, Territory of Utah, for the quarter ending June 30, 1881.

Signed by John M. Peck, and witnessed by Lathrop R. Bacon and Harvey G. Gray.

[The set of papers last read was marked by the clerk 53 C.]

Account without warrant—the United States to John M. Peck, debtor, for carrying the mails on route 41119, in Utah Territory, \$4,827.83. Annexed is an order dated June 6, 1881 :

Pay to J. W. Bosler, or order, the sum of \$4,827.83, out of any moneys due me on route 41119, Territory of Utah, for the quarter ending September 30, 1881.

Signed by John M. Peck, contractor, and witnessed by Lathrop R. Bacon and Harvey G. Gray.

Mr. WILSON. Had you not better ask where the warrant is ?

Mr. BLISS. There are two without warrants, and I am giving him as to both.

[The set of papers last read was marked by the clerk 54 Account of John M. Peck for carrying the mails on route the quarter ending December 31, 1881, \$4,827.83. And following letter, stamped as received by the Auditor of the the Post-Office Department, February 2, 1882:

CARLISLE, PENNSYLVANIA, *January*

DEAR SIR: In reference to the draft on file in your office, payable to me on pay on route 41119, for the quarter ending December 31, 1881, I have to say the same was held by me as collateral for the payment of money advanced and said amount being now secured to me by the substitution of other securities, I have no further interest in said draft, and you can dispose of the matter as you see fit.

Respectfully,

J. V.

[The paper last read was marked by the clerk 55 C.]

SPECIAL REPORT.

41119. Utah. Adairville to Pabreah. 122 m. 7 a. w. John M. Peck M. C. Kerdell, \$19,311.35. Received order No. 1011 of January 27, 1882, for pay.

R. A. I.

Second Assistant Postmaster

To the AUDITOR OF THE TREASURY FOR THE POST-OFFICE DEPARTMENT

Q. Two of these accounts have no warrant connected with them. Where are the warrants?—A. They have not yet been returned to the department.

Q. How does that happen?—A. It generally takes six months before they are returned.

Mr. WILSON. I do not care anything about it as far as the department is concerned, but there has been produced here and read to the jury a paper which shows that in 1882 an order was made suspending the pay, and subsequently another order was made removing that suspension.

Mr. BLISS. Do you want that order?

Mr. WILSON. If you are going to put these papers in the record, long after we left the office, give us the whole of them. That is all I want.

Mr. BLISS. You can have them. I did not know of the contents of this paper until it was read here this minute. I do not care whether it is in or not. I simply read it because it was annexed to the order which was putting in. I am perfectly willing it should be taken out.

Mr. WILSON. I do not want it taken out.

Mr. BLISS. Then I will produce the order. I did not know of its existence before. I haven't it here.

The COURT. Mr. Bliss has a right to withdraw the papers if he pleases.

Mr. BLISS. The paper is annexed to the warrant, and probably will be left in, although I do not care whether it is in or out.

Mr. WILSON. I want to call the attention of the court to the fact of their putting in part of the record.

The COURT. The record will be large enough without adding more papers.

Mr. BLISS. I will withdraw the order of Mr. Elmer re the suspension.

Mr. WILSON. Oh, no; he cannot do that, your honor. He makes an order suspending the pay, and then makes an order removing the suspension.

Mr. BLISS. I will leave it in or take it out, just as you please. You can have your own way.

Mr. WILSON. I do not want my own way.

The COURT. [To Mr. Bliss.] You can withdraw it. If the other side want it they can put it in.

Mr. WILSON. I simply want to call the attention of the court to the fact that they are putting in incomplete records. If they are going to put in anything I want it all.

Mr. BLISS. I withdraw it.

The COURT. It is hardly proper to call these files records. They are not like the records of a court in regard to a particular suit or action. They are received in evidence here for the purpose of showing what Mr. Brady had before him when he acted. Whether they are complete as records or not is of no consequence at all. We just want to know what it was that Mr. Brady had.

Mr. WILSON. The only thing I am complaining about is that they bring in things here that never got into the department until long after General Brady left.

The COURT. Mr. Bliss told you that it was a mistake and proposes to withdraw it, and I propose to let him withdraw it.

Mr. BLISS. You can have it either way you choose; in or out.

The COURT. When he proposed to withdraw it I understood you to object.

Mr. WILSON. No; I am not objecting.

The COURT. Then he can withdraw it.

Mr. BLISS. I read it because I supposed they would insist upon the reading of every paper attached; and if I left it without reading, they would accuse me of having suppressed something. I simply withdraw the order of Elmer.

Now I offer, without reading, the tabular statement similar to that put in upon the other routes, showing upon this route from the 1st of July, 1878, down to the 2d of February, 1882, an aggregate sum of \$49,801.83 paid, less \$1,846.08 deducted for fines and deductions, leaving the net amount of payments \$47,955.75.

Statements and recapitulation of payments made to Dorsey, Miner, and Peck, their subcontractors and assignees, on nineteen routes below described.

Route.	Termini.		State.	Pay accrued.	Fines and deductions.	Remissions, &c.	Total payments.
	From—	To—					
41119.....	Toquerville.	Adairville.	Utah Ter..	\$49,801 83	\$1,846 08	.....	\$47,955 75

Route No.	Terminal.			Auditor's report.		Period for which paid.	Pay per quarter.	Loss fines and deductions.	Amount of payment.	Warrant or draft.		To whom paid.	Contractor, assignee, contractor, and assignee.
	From—	To—	State.	No.	Date.					No.	Date.		
41119 Toquerville, & dairville, Utah.			Utah.	20554	Nov 18, 1878	3 qr., 1878	\$892 00	\$5 61	\$286 39	W. 12090	Nov. 30, 1878	John M. Peck.....	Contractor
				2847	Jan. 27, 1879	4 qr., 1878	679 22	.....	679 22	W. 14380	Jan. 29, 1879	H M. Valle.....	Assignee.
				11312	April 22, 1879	1 qr., 1879	876 00	.....	876 00	W. 29886	Apr. 23, 1879	H M. Valle, Lewis Johnson & Co.	Assignee.
				19428	July 23, 1879	2 qr., 1879	876 00	86 53	789 42	W. 28886	July 24, 1879	S. W. Dorsey, Middle- ton & Co.	Assignee.
				30040	Oct. 30, 1879	3 qr., 1879	3, 628 14	540 42	3, 087 72	W. 9078	Nov. 3, 1879	S. W. Dorsey, Middle- ton & Co.	Assignee.
				7614	Feb. 12, 1880	4 qr., 1879	4, 827 83	960 01	4, 867 82	W. 9440	Feb. 21, 1880	S. W. Dorsey, J W Boiler.	Assignee.
				13948	April 30, 1880	1 qr., 1880	4, 827 83	947 02	3, 880 81	W. 3004	May 1, 1880	S. W. Dorsey, J W Boiler	Assignee.
				22946	Aug. 16, 1880	2 qr., 1880	4, 827 83	.....	4, 827 83	W. 9404	Aug. 18, 1880	J W. Boiler.....	Assignee.
				29875	Oct. 23, 1880	3 qr., 1880	4, 827 83	.....	4, 827 83	W. 11944	Oct. 25, 1880	J W. Boiler.....	Assignee.
				4653	Jan. 27, 1881	4 qr., 1880	4, 827 83	.....	4, 827 83	W. 9065	Jan. 29, 1881	J. W. Boiler.....	Assignee.
				10207	April 15, 1881	1 qr., 1881	4, 827 83	.....	4, 827 83	W. 4876	Apr. 16, 1881	J. W. Boiler.....	Assignee.
				20448	July 19, 1881	2 qr., 1881	4, 827 83	.....	4, 827 83	W. 585	July 22, 1881	J W. Boiler.....	Assignee.
				29976	Oct. 21, 1881	3 qr., 1881	4, 827 83	.....	4, 821 30	W. 4911	Oct. 23, 1881	J. W. Boiler.....	Assignee.
				7490	Feb. 2, 1882	4 qr., 1881	4, 827 83	6 44	4, 827 83	W. 304	Feb. 4, 1882	M. C. Rordell.....	Subcontractor.
							49, 801 83	1, 646 08	47, 955 75				

Mr. WILSON. Have you not put in the drafts ?

Mr. BLISS. I have put in the drafts, and now I put in this certified tabular statement. I also offer the certified record of the productiveness of that route.

Mr. TOTTEN. That we object to, your honor, as immaterial.

The COURT. I overrule the objection, as before.

Mr. TOTTEN. I take an exception. I want to have something interesting here to-day.

Mr. BLISS. The receipts of the post-office at Toquerville, Utah, including also those on route 41117, for the fiscal year ending June 30, 1879, were as follows: Gross revenue, \$587.50; net revenue, \$250.10. For the fiscal year ending June 30, 1880, gross revenue, \$546.91; net revenue, \$187.01. For the fiscal year ending June 30, 1881, gross revenue, \$547.81; net revenue, \$121.70. For Virgin City, for the fiscal year ending June 30, 1879, gross revenue, \$500.04; net revenue, \$248.85. For the fiscal year ending June 30, 1880, gross revenue, \$451.03; net revenue, \$204.11. For the fiscal year ending June 30, 1881, gross revenue, \$545.70; net revenue, \$246.01. For Duncan's Retreat, for the fiscal year ending June 30, 1879, gross revenue, \$369.97; net revenue, \$113.87. For the fiscal year ending June 30, 1880, gross revenue, \$448.56; net revenue, \$85.92. For the fiscal year ending June 30, 1881, gross revenue, \$566.80; net revenue, \$82.81. Grafton post-office, for the fiscal year ending June 30, 1879, gross revenue, \$139.74; net revenue, \$27.78. For the fiscal year ending June 30, 1880, gross revenue, \$254.09; net revenue, \$25.66. For the fiscal year ending June 30, 1881, gross revenue, \$307.92; net revenue, \$35.93. Rockville, for the fiscal year ending June 30, 1879, gross revenue, \$173.64; net revenue, \$78.86. For the fiscal year ending June 30, 1880, gross revenue, \$214.79; net revenue, \$80.50. For the fiscal year ending June 30, 1881, gross revenue, \$172.14; net revenue, \$69.69. For the post-office at Kanab, for the fiscal year ending June 30, 1879, gross revenue, \$794.01; net revenue, \$319.74. For the fiscal year ending June 30, 1880, gross revenue, \$609.20; net revenue, \$264.95. For the fiscal year ending June 30, 1881, gross revenue, \$597.87; net revenue, \$228.90. For the post-office at Johnson for the fiscal year ending June 30, 1879, gross revenue, \$561.77; net revenue, \$321.47. For the fiscal year ending June 30, 1880, gross revenue, \$308.96; net revenue, \$127.62, less credits, \$26.04; total net, \$101.58. For the fiscal year ending June 30, 1881, gross revenue, \$514.45; net revenue, \$260.13. Post-office at Pabreah, for the fiscal year ending June 30, 1879, gross revenue, \$264.50; net revenue, \$102.05. For the fiscal year ending June 30, 1880, gross revenue, \$125.24; net revenue, \$55.06. For the fiscal year ending June 30, 1881, gross revenue, \$128.68; net revenue, \$48.90. For the post-office at Adairville for the fiscal year ending June 30, 1879, gross revenue, \$161.19; net revenue, \$98.67. This office was discontinued June 19, 1879. The total net revenues of all the offices for the fiscal year ending June 30, 1879, was \$1,586.47; for the fiscal year ending June 30, 1880, \$1,042.57; for the fiscal year ending June 30, 1881, \$1,094.07; total, \$3,723.11.

The statement in full is as follows :

Form of certificate.

(F.)

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPT.

I, J. H. Ela, Auditor of the Treasury for the Post-Office Department, do certify the annexed to be a true and correct statement from the records of showing the gross and the net revenues of the post-offices located on route Toquerville to Adairville, Utah, from July 1st, 1878, to June 30, 1881.

In testimony whereof I have hereto signed my name, and caused to be seal of office, at the city of Washington, this 12th day of June, in the year one thousand eight hundred and eighty-two.

[SEAL.]

J. H. ELA,

Name of office.	Quarter.	Gross revenue.	
Toquerville, Utah	3 qr., 1878...	\$116 68	
	4 " " ..	125 54	
Also, on route 41117	1 " 1879 ..	145 50	
	2 " " ..	129 64	
		587 60	
	3 qr., 1879..	156 50	
	4 " " ..	133 40	
	1 " 1880..	114 26	
	2 " " ..	142 75	
		546 91	
	3 qr., 1880 ..	151 95	
	4 " " ..	152 69	
	1 " 1881..	132 42	
	2 " " ..	104 15	
		547 81	
Virgin City, Utah.....	3 qr., 1878 ..	113 62	
	4 " " ..	124 78	
Also, on route 41120.....	1 " 1879 ..	127 00	
	2 " " ..	130 65	
		500 04	
	3 qr., 1879..	65 06	
	4 " " ..	110 00	
	1 " 1880..	112 25	
	2 " " ..	143 73	
		451 03	
	3 qr., 1880..	120 25	
	4 " " ..	146 15	
	1 " 1880..	136 25	
	2 " " ..	143 05	
		545 70	
Duncan's Retreat, Utah.....	3 qr., 1878 ..	98 43	
	4 " " ..	81 30	
	1 " 1879 ..	92 30	
	2 " " ..	97 94	
		369 97	
	3 qr., 1879 ..	89 50	
	4 " " ..	107 96	
	1 " 1880 ..	118 92	
	2 " " ..	122 16	
		437 54	

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
	3 qr., 1880..	\$143 60	.....	\$18 77	.....
	4 " " ..	137 70	.....	20 03	.....
	1 " 1881..	143 40	.....	25 87	.....
	2 " " ..	142 10	.....	18 14	.....
		566 80	.....	82 81	.....
Alton, Utah.....	3 qr., 1878..	35 00	.....	5 30	.....
	4 " " ..	40 00	.....	13 33	.....
	1 " 1879 ..	25 20	.....		.....
	2 " " ..	39 54	.....	9 15	.....
		139 74	.....	27 78	.....
	3 qr., 1879..	41 02	.....		.....
	4 " " ..	58 82	.....	3 74	.....
	1 " 1880..	73 86	.....	7 36	.....
	2 " " ..	80 39	.....	14 56	.....
		254 09	.....	25 66	.....
	3 qr., 1880..	75 53	.....	11 95	.....
	4 " " ..	80 24	.....	8 50	.....
	1 " 1881..	78 41	.....	10 00	.....
	2 " " ..	73 74	.....	5 48	.....
		307 92	.....	35 93	.....
Albionville, Utah	3 qr., 1878..	35 03	.....	16 11	.....
	4 " " ..	33 96	.....	12 83	.....
	1 " 1879..	54 65	.....	25 44	.....
	2 " 1879..	50 00	.....	24 48	.....
		173 64	.....	78 86	.....
	3 qr., 1879..	47 13	.....	20 73	.....
	4 " " ..	43 34	.....	10 41	.....
	1 " 1880..	77 00	.....	33 10	.....
	2 " 1880..	47 32	.....	16 26	.....
		214 79	.....	80 50	.....
	3 qr., 1880..	25 26	.....	9 98	.....
	4 " " ..	45 91	.....	18 96	.....
	1 " 1881..	53 12	.....	21 73	.....
	2 " " ..	47 85	.....	19 02	.....
		172 14	.....	69 69	.....
Alton, Utah	3 qr., 1878..		.....	
continued Oct. 13, 1879.....	4 " " ..		.....		\$6, 92
	1 " 1879..		.....	
	2 " " ..	42 50	.....	32 00	.....
		42 50	.....	32 00	.....
			Less credits ..	6 92	.....
			Total net	25 08	.....
	3 " 1879..	59 45	.....	26 30	.....
	4 " " ..	29 48	.....	11 48	.....
	1 " 1880..		.....		.....
	2 " " ..		.....		.....
		88 93	.....	37 78	.....
Alton, Utah.....	3 qr., 1878..	221 75	.....	100 88	.....
	4 " " ..	247 45	.....	116 65	.....
on route 41122.....	1 " 1879..	146 76	.....	16 13	.....
	2 " " ..	178 05	.....	86 08	.....
		794 01	.....	319 74	.....
	3 qr., 1879..	151 60	.....	64 04	.....
	4 " " ..	154 60	.....	65 69	.....
	1 " 1880..	150 00	.....	69 70	.....

Name of office.	Quarter.	Gross revenue.	Net revenue.
	2 " " ..	\$153 00	\$65 52 ..
		609 20	264 45 ..
	3 qr., 1880..	141 50	55 49 ..
	4 " " ..	115 77	24 79 ..
	1 " 1881..	170 00	75 73 ..
	2 " " ..	170 80	72 69 ..
		597 87	227 90 ..
Johnson, Utah.....	3 qr., 1878..	165 60	72 70 ..
	4 " " ..	174 20	174 20 ..
	1 " 1879..	135 00	57 50 ..
	2 " " ..	86 97	16 97 ..
		561 77	321 47 ..
	3 qr., 1879..	150 07	77 57 ..
	4 " " ..	33 90 .....	.. ..
	1 " 1880..	25 00	10 06 ..
	2 " 1880..	99 99	39 99 ..
		308 96	127 62 ..
		Less credits..	28 04 ..
		Total net.....	101 58 ..
	3 qr., 1880..	109 85	50 08 ..
	4 " " ..	142 50	74 99 ..
	1 " 1881..	152 70	85 05 ..
	2 " " ..	109 40	50 00 ..
		514 45	260 13 ..
Pahreah, Utah.....	3 qr., 1878..	73 00	29 90 ..
	4 " " ..	95 60	45 29 ..
	1 " 1879..	68 00	27 26 ..
	2 " " ..	27 90	30 ..
		264 50	102 05 ..
	3 qr., 1879..	62 10	37 57 ..
	4 " " ..	22 10	93 ..
	1 " 1880..	22 85	9 44 ..
	2 " " ..	18 29	7 12 ..
		125 24	55 06 ..
	3 qr., 1880..	25 14	11 00 ..
	4 " " ..	32 46	12 61 ..
	1 " 1881..	36 32	14 76 ..
	2 " " ..	34 76	10 43 ..
		128 68	48 90 ..
Adairville, Utah	3 qr., 1878..	52 79	27 10 ..
	4 " " ..	50 39	50 16 ..
Omitted from this route Aug. 1, 1878	1 " 1879..	35 00	14 00 ..
	2 " " ..	23 01	7 42 ..
		161 19	98 67
Discontinued June 19, 1879.			

Mr. WILSON. What is the gross revenue; can't you give that?

Mr. BLISS. Yes; I can give that if you desire it.

Mr. WILSON. Give it all.

Mr. BLISS. The gross revenue for the year ending June 30, 1879, was \$3,594.86. For the fiscal year ending June 30, 1880, \$3,047.71. For the fiscal year ending June 30, 1881, \$3,381.37. This includes all—

Mr. WILSON. [Interposing.] Never mind about that.

Mr. BLISS. I am reading from this paper. It says that Toquerville, Virgin City, and Kanab were supplied by other routes. Deducting the revenues from these offices, we have the following as the revenues of all the offices depending solely on this route for their mail supply. Gross, \$1,713.31; net, \$767.76.

Mr. WILSON. Whose speech is that?

Mr. BLISS. I am reading it here.

Mr. WILSON. That is nothing for the auditor to certify.

Mr. BLISS. No; it is not.

Mr. WILSON. I think you had better not read it.

Mr. BLISS. I supposed you would like that to go down.

Mr. TOTTEN. Who made that paper?

Mr. BLISS. It was made in the auditor's office, as I understand.

Mr. TOTTEN. I did not ask you where it was made; I asked you who made it.

Mr. BLISS. I cannot tell you.

Mr. TOTTEN. Did Mr. Woodward make it?

Mr. BLISS. No, sir.

The COURT. It is not certified. [To Mr. Bliss.] You can keep it as your own paper.

NEPHI JOHNSON recalled and examined.

By Mr. BLISS:

Question. Do you know of any petition having been circulated which has not been shown to you here?—Answer. I do not know of it positively, but I have heard of it.

Q. You do not know of your own knowledge?—A. No, sir.

Mr. BLISS. That is all.

W. D. JOHNSON sworn and examined.

By Mr. BLISS:

Question. Where do you live?—Answer. I live at Kanab, Utah.

Q. How long have you lived there?—A. I have lived there for twelve years.

Q. Are you in business there?—A. Yes, sir.

Q. [Submitting a paper to witness.] Look at this petition marked 6 C, and see if you ever saw it before?—A. [After examining same.] Yes, sir.

Q. Do you know who drew it?—A. Yes, sir.

Q. Who did?—A. I drew the petition myself.

Q. At whose instance, if anybody's?—A. Well, it was talked up among the people there. It was stated that more service could be got if the petition was gotten up, and so a number of the citizens met together and got the petition up.

Q. Now, when you drew it did it have in it the word and figure seven?—A. I think not; I could not say—

Mr. WILSON. [Interposing.] Hold on a minute. I want to raise a point here, if your honor please. They have made some general allegations here as to petitions being fraudulent, and all that, without specifying wherein they were fraudulent, and without any such notice to us as to what is complained of in regard to them, as upon our inquiry to give us an opportunity to answer, and on account of this we made the motion to the court to require them to give us a bill of par-

ticulars. The court overruled that motion. Now I want to object, at this point, to any investigation as to a matter of that sort in this case, excepting in those cases where some specific allegation has been made as to which we could be called to make our answer. Now, this is one of them, and, it being the first one that is presented, I want to get in a full objection.

Mr. MERRICK. There have been two or three of them before.

Mr. WILSON. Oh, no.

Mr. MERRICK. Your honor settled that before. We had one with the words "quicker time" in.

The COURT. The charge of conspiracy is in itself a charge of a very general character, and has to be made on the trial, generally, by circumstances, proofs of the acts of the parties. It is not possible to establish a charge of conspiracy generally by any other evidence than that, and the law allows that kind of evidence for the purpose of proving it. It is not necessary, therefore, to set out in the indictment what is going to be the evidence of the Government to establish the charge of conspiracy. But as to the overt act which is done in pursuance of the conspiracy, the Government is obliged, under our statute, to state some overt act as it is called, and when it undertakes as it must undertake in the indictment to set out the overt act, they do it exactly. But there is no such exactness required, and they may give notice then if necessary of the proof that the Government may offer on the trial as to the conspiracy itself, and if this alteration of a petition as it is alleged to be a fact, the purpose of showing which may tend to show a conspiracy between these parties, or any other, in regard to the subject of the route, the expediting of service, and getting money out of that route, I think it is competent evidence, although it has not been charged specifically as and proved of the conspiracy in the indictment. The evidence is admitted; that is, you are to put the question.

By Mr. BLISS:

Q. [Resuming.] Are the word and the figure 7 your writing?—No; it is not my writing.

Q. The rest of the petition is?—A. Yes, sir.

Q. Were they there when you signed the petition?—A. Not to my knowledge.

Q. What was there; what did you write there?—A. I wrote times."

Mr. MERRICK. What is it now?

Mr. BLISS. Seven.

Mr. MERRICK. Letters or figures?

Mr. BLISS. Both.

Q. Did you write six in letters or figures?—A. Figures.

Q. Now it is seven in both letters and figures?—A. Yes, sir.

Q. What did you do with that petition; did you circulate it?—A. No, sir; I did not circulate it personally; some of the citizens in that place did. I do not remember now who did; but there were quite a number took an interest in it and circulated it.

[The paper was submitted to the jury for inspection.]

Q. How long have you lived in that region?—A. About twelve years.

Q. Are you acquainted with the people living on the line of this route generally?—A. A good many of them, as a general thing.

Q. You know who lives there, or who has lived there?—A. I know a good many of them; I don't know as I know all of them.

Q. [Submitting a paper to witness.] I show you the petition marked

7 C. Please look over the list of signers and see if you recognize the names there ?—A. [After examining same.] There are some four or five names here that I know.

Q. Such as who ?—A. Aleck Nichols, W. D. Dongall, James Andrus, James Little, and J. L. Bunting.

Q. You do not recognize any other names on that petition ?—A. No, sir.

Q. Are those men living on the route now ?—A. Yes, I think they are.

Q. Were they living there in 1879 ?—A. I think they were ; yes, sir.

Q. Do you recognize this name of Swapp ?—A. There is a family of Swapps in a place called Long Valley. I couldn't say whether this is one of them, but there is a family living there by that name.

Q. Did you notice Mr. Cannon's name on that petition written length-wise ?—A. I did not notice it.

Q. [Resubmitting paper.] You recognize that, do you not ?—A. Yes, sir ; that is Mr. Cannon's signature.

Q. [Submitting another paper to witness.] Now, I show you 4 C, a petition, and ask you if you recognize the signatures as to that ?—A. [After examining same.] Yes, sir.

Q. They are all people living along the route ?—A. Yes, sir ; I am acquainted with a portion of them, with a number of them.

Q. Now, have you any knowledge of any petition other than these which have been shown to you having been circulated there ?—A. Not that I know of. I do not remember of any ; there might have been. At that time there were quite a good many petitions gotten up as there was quite a mining excitement in our country, and we were very anxious to get more service.

Q. You do not know, of your own knowledge, of any other petition ?—A. No, sir ; I do not remember. There might have been some, but I do not know of any.

Mr. WILSON. Please repeat what you said ; I did not hear you.

The WITNESS. In relation to what ?

Mr. WILSON. In relation to miners.

The WITNESS. At the time this petition was gotten up——

Mr. BLISS. [Interposing.] Which petition ?

The WITNESS. The one I wrote. There was quite an excitement all through our country, and the country was full of miners, and they were very anxious to have more mail facilities, and I stated that there might have been other petitions, but not that I knew of ; that I did not remember them.

By Mr. BLISS :

Q. Did you forward this petition to anybody ?—A. I do not remember whether I did or not.

Q. Who had anything to do with it here, so far as you know ?—A. I think, if my memory serves me right, it was forwarded to Delegate Cannon ; but I would not say for certain in that regard.

Q. You do not remember whether you forwarded it or not ?—A. I cannot tell, but I think very probably that I did. I am not certain about that.

Q. Mr. Nephi Johnson is a cousin of yours ?—A. Yes, sir.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. This petition, marked "7 C," was shown you, and, I believe, you

stated that you recognized the names of persons on that petition who lived along that line of route?—A. Yes, sir; some four or five.

Q. In what locality did these parties live?—A. Mr. Nichols at the time lived at Kanab; Mr. Dougall lived in Salt Lake City.

Q. Lived in Salt Lake City at that time?—A. He did, and does now. James Andrus lived at that time somewhere on the line between Toquerville and Winsor. I believe he had a ranch there, James Little lived at Kanab and James Bunting lived at Kanab.

Q. There was a general movement for the purpose of getting this increase and expedition of service ordered?—A. Yes, sir.

Q. And the parties when they got up these petitions all understood each other, did they not?—A. Yes, sir.

Q. And they were all desiring the same thing?—A. Yes, sir.

Q. This petition, I find, says that the parties earnestly request the service to be increased to seven times a week, and on less schedule. [Submitting the paper to witness.] Will you look at that and see whether that has been changed any?—A. I never saw this petition before.

Q. I want you to see whether there has been any change in that petition.

Mr. BLISS. He is not an expert in changes.

A. I don't know anything about it.

Q. [Resuming.] You say these parties were united in asking for what they wanted?—A. Yes, sir.

Q. And there is a petition that asks for seven times a week daily mail, and signed by people that you know lived there along that route?

Mr. BLISS. He said he knew five or six of them.

A. I don't know anything about it.

Q. [Resuming and submitting to witness a paper not marked.] Look at that and see if you know the names of the people who signed this petition?—A. [After examining the same.] I am acquainted with a few of the persons named on this list. They live at Toquerville. They do not live in my immediate vicinity, so that I am acquainted with but a few of them.

Q. [Resubmitting petition to witness.] I understand you to say that this seven times and the figure 7, as you understand it, were not in the petition when you drew it?—A. Yes, sir.

Q. You drew the petition?—A. Yes, sir.

Q. It is in your handwriting?—A. Yes, sir.

Q. And you think that in making that change the 7 has been changed from 6, and the word seven has also been written in there?—A. Yes, sir.

Q. But whether that was done before it was forwarded to Washington City or not you are not able to say?—A. I could not say.

Q. You did ask for a daily service, did you not?—A. Yes, sir.

Q. That is what you wanted?—A. Yes, sir.

Q. That is what you were working for?—A. Yes, sir.

Q. And that means seven times a week?—A. I did not so understand. I will explain why.

Mr. MERRICK. Explain it.

The COURT. The witness has a right to answer.

A. [Continuing.] At the time the petition was gotten up we asked the contractor whether he thought we could get seven times a week or not—that is, the subcontractor, Mr. Nephi Johnson—and he said he thought if we got it six times a week we would be very lucky, consequently we put in six times a week instead of seven. That is the reason

I wrote six times when I wrote it. Whether it was changed or not before it left Kanab I could not say.

Q. You asked for a change from a tri-weekly to a daily service?—A. Yes, sir.

Q. And that was in the body of the petition, and you wrote it?

Mr. BLISS. That is another petition.

Mr. WILSON. No, sir.

Mr. BLISS. Is this the petition that is in evidence?

Mr. WILSON. This is the very identical one.

Mr. BLISS. Will you let me see it?

Mr. WILSON. Yes, sir [submitting same].

Q. [Resuming.] You think you did not write that?—A. No, sir; I know that I did not.

Q. How long have you been here in Washington?—A. I came here on the 18th of May.

Q. Have you been here ever since?—A. Yes, sir.

Q. You came here to testify in this case?—A. Yes, sir.

Q. How many times have you been here before that?—A. I never have been here before that.

Q. How long does it take to come from Kanab to Washington?—A. I think we were some ten days coming.

Q. You came up to Salt Lake City, did you?—A. Yes, sir.

Q. Are you the Johnson on this petition, who signs his name "member of the legislative assembly of Utah"?—A. Yes, sir.

Q. You wanted seven mails a week there if you could get it?—A. We asked for six, expecting that was all we would get, but we were disappointed, and very agreeably so, by having seven times a week.

Q. You thought you needed it?—A. Yes, sir; we needed all we could get.

Q. And everything set forth in this petition is true, is it not?—A. I did not know anything to the contrary at that time.

Q. This petition says:

This is also the main thoroughfare through Southern Utah, via Lee's Ferry, to Sunset, Arizona.

Is that right?—A. Yes, sir.

Many rich mines are being found and developed, and the country is fast filling up, which demands more mail facilities and change of service from tri-weekly to daily service.

A. It was at that time; it is not so now.

Your prompt and favorable consideration of this matter will greatly promote the growth and prosperity of this part of the country.

Q. Did you think that was true when you wrote it?—A. Yes, sir.

Q. Is it true now?—A. No, sir.

Q. I ask you to state, now, to the jury whether mail facilities do not assist in the growth and development of the country?—A. Yes, sir; they do.

Q. And are regarded as an important adjunct in that behalf?—A. By all means.

Q. I will ask you, from your knowledge of that country, you having lived out there for a long time, whether these facilities for mail, both in trips, speed, and so forth, are not regarded by the people there as of the very greatest importance to them?—A. Yes, sir; they so regarded it, and do now.

Q. And are clamorous for it all the time?—A. Yes, sir.

Q. And these petitions were sent here to the Post-Office Department

By Mr. BLISS :

Q. These petitions asked for forty-eight hours. seeking thirty-three hours' time ?—A. No, sir ; I will explain why they did not. Mr. Nephi Johnson has carried mail in our country for a number of years, and the people respect him very much there, because he has been straightforward with the people, and paid them for their services in carrying the mails. We consulted with him about the matter before the petition was drawn, and he thought that forty-eight hours was just as quick time as was necessary, and we took his judgment on the matter ; consequently we asked for what we thought necessary forty-eight hours.

Q. You asked for forty-eight hours and not for thirty-three ?—A. Yes, sir.

Q. It was put down to thirty-three, and you afterwards asked to have it put up to forty-eight ?—A. Yes, sir ; that we did because we thought it was an injustice to Mr. Johnson.

RECROSS-EXAMINATION.

By Mr. WILSON :

Q. Did you consider thirty-three hours a fast schedule for that country there ?—A. No, sir.

Q. It was very slow was it not ?—A. Not so very slow. I appreciated it very much. It was an accommodation, and we appreciated very much.

Q. Getting the thirty-three ?—A. Yes, sir.

Q. Now, then, if you got the thirty-three for exactly the same price that the forty-eight would have cost, you were benefited and the Government was not cheated. Is not that so ?—A. That looks very reasonable.

Mr. WILSON. It looks so ; it is so, and that is the way it will turn out in this case.

Mr. BLISS. It is not so, Mr. Wilson.

Q. [Resuming.] There has been read here a petition from the postmaster asking the department to extend the running time from thirty-three to forty-eight hours. I will ask you to state now if that petition was not gotten up and circulated along there, and signed for accommodation of Nephi Johnson.—A. I could not say as to that don't know anything about it.

Q. Do you not recollect that Mr. Nephi Johnson complained that they were requiring too fast a schedule ?

Mr. MERRICK. Mr. Nephi Johnson is here himself, and no foundation for such inquiry has been laid from what he said.

The WITNESS. [To Mr. Wilson.] I do not understand your question.

Q. [Resuming.] My question is simply this : Is it not the fact that this second petition that was signed asking the department to increase the running time from thirty-three to forty-eight hours was gotten up for the accommodation of Mr. Nephi Johnson, the carrier ?

Mr. MERRICK. I object.

The COURT. The objection is overruled.

A. I don't know anything about it.

Q. How do you know that asking for forty-eight instead of thirty-three hours was for the benefit of Nephi Johnson; you say you consulted over that thing?—A. We talked with him about it.

Q. And he thought forty-eight hours would be more convenient for him and better for him?—A. Yes, sir.

Q. And you, for his accommodation, were willing to accept forty-eight?—A. Yes, sir.

Q. At the same time you thought thirty-three was really what you ought to have?—A. It is natural for anybody to want the mail as quick as they can get it.

Q. Exactly. Do you know who got up the petition to extend the time from thirty-three to forty-eight?

The COURT. I think he has answered that. You have asked him about that.

Mr. WILSON. Not that petition, your honor. I do not happen to have it.

Q. [Resuming and submitting paper marked 12 C to witness.] Will you please to look at this petition and see if that is your signature to it?—A. Yes, sir.

Q. Now, this petition which you say you signed reads thus:

The undersigned, postmasters and others, on and near post-route 41119, from Toquerville, Utah, to Pahreah, Utah Territory, respectfully represent that the present schedule time on said route is unnecessary, and, in the winter especially, impracticable, and would suggest that the same be changed to the following times, viz:

Leave Toquerville daily at 6 a. m.

Arrive at Pahreah in 60 hours.

Leave Pahreah daily at 6 a. m.

Arrive at Toquerville in 60 hours.

We consider the present increased speed entirely unnecessary to the wants of the people, and an uncalled for expense to the Government. And we consider that the winter storms on the high mountain ridges over which this route passes make the present required time almost impracticable, and the people who ask for the daily service did not desire or expect an increase of speed.

Q. Now, you signed both of these petitions?—A. Yes; I can explain that.

Q. I am just simply reading to give you an opportunity to explain.

—A. At the time the first petition was gotten up, the country was full of miners. Some mines had been discovered in Pahreah, and they were supposed to be very rich, and at that time a thousand or two thousand people were in that country, aside from the people who lived there. Of course, trade looked up materially, and we wanted a daily mail in forty-eight hours time. After that we found from the statement of Mr. Nephi Johnson that from the amount he was getting for the work on this route he was losing by it; he did not come out even. His money was all paid out for his carriers, and he had none for himself; consequently the people sympathizing with him, sent this petition to have it reduced.

Q. Now then, Mr. Johnson, do you know who drew this petition up?

—A. No, sir; I do not.

Q. You do not in this petition, you will observe, give the Post-Office Department any information that there has been any change in the necessities of the situation out there; why did you not do that?—A. I could not say.

Q. But you did not inform the Post-Office Department that this one thousand or two thousand miners had departed from that country?—A. No sir.

Q. You did not inform them that the country had ceased to be rapidly filling up, you observe. You give them no information upon that subject, but simply say that you think it is unnecessary?—A. Yes, sir.

Mr. WILSON. That is all.

Mr. BLISS. We pass now to route No. 44155, from The Dalles to Baker City.

I offer in evidence the contract made March 15 between John M. Peck, as contractor, and Samuel N. Hoyt, of Washington, and D. W. C. Wheeler, of New York City, on route 44155, from The Dalles, Oregon, by Des Chutes, Bake Oven, Antelope, Bridge Creek, Monument, Camp Watson, Dayville, Canyon City, Prairie City, Penola, Sumpter, and Auburn to Baker City and back, twice a week, for \$8,288 a year.

Mr. WILSON. What is the distance named there?

Mr. BLISS. The distance is not named, sir. It is named in the contract, I think. In point of fact the advertised distance was two hundred and seventy-five miles. The contract was executed by Peck the 11th of May, 1878, by Hoyt the 24th of May, by Wheeler on the 25th of May, in the presence of George F. Fall and A. E. Boone, and certified on the 27th of May by J. M. Edmunds, postmaster. The schedule of departures and arrivals is to leave The Dalles on Monday and Thursday at 4 a. m., and arrive at Baker City in twenty-four hours, leave Baker City on Monday and Thursday at 4 a. m., and arrive at The Dalles in one hundred and twenty hours' time. John M. Peck make the oath, and it is sworn to before Henry Weigand, notary public, in Colfax, Territory of New Mexico, the 11th of May, 1878.

Mr. BLISS. [To Mr. Wilson.] Do you want that I should put the clerks on the stand to prove the files?

Mr. WILSON. Yes, sir.

BYRON C. COON sworn and examined.

By Mr. BLISS :

Question. What is your business?—Answer. I am a clerk in the contract office.

Q. Of the Post-Office Department?—A. Yes, sir.

Q. How long have you been there?—A. About thirteen years.

Q. [Submitting a paper to witness.] Please look at this paper headed July 17, 1878, and state if you know the handwriting of the indorsement thereon.—A. [After examining the same.] It is William H. Turner's.

Q. [Submitting another paper to witness.] I show you this paper, and call your attention to the first indorsement at the top, which is dated August 7, 1878, and ask you if you know the handwriting of that?—A. [After examining the same.] It is William H. Turner's.

Q. [Submitting another paper to witness.] I show you one marked 44155, August 7, 1878. Whose handwriting is that?—A. That is in my own handwriting.

Q. I see it has upon it a certain stamp. What is that stamp?—A. It is the official stamp of the department.

Q. Showing what?—A. Showing the date of the receipt of the paper at the office.

Q. [Submitting another paper to the witness.] I show you one having in red ink at the top, September 9, 1878. Whose handwriting is that?—A. [After examining same.] I could not say whose that is.

Q. What stamp is that upon that?—A. That is the department official stamp.

Q. Showing what?—A. Showing the receipt of the paper at the office.

Q. [Submitting another paper to the witness.] I show you a jacket which is dated September 27, 1878. Whose handwriting is that?—

A. [After examining the same.] That in red ink is William H. Turner's, also the black, except the signature.

Q. Whose handwriting is the signature?—A. That of Mr. John L. French.

Q. What position did he hold?—A. Chief clerk of the contract office.

Q. [Submitting another paper to witness.] I show you another paper dated November 11, 1878 at the top. In whose handwriting is that?—

A. [After examining the same.] Mr. William H. Turner's.

Q. I see there is a stamp on the inside. Do you know the stamp?—

A. That is a department stamp, "inspection office."

Q. [Submitting another paper to witness.] I show you a jacket dated November 12, 1878, whose handwriting is that?—A. [After examining the same.] That is William H. Turner's, except the signature.

Q. Whose handwriting is the signature?—A. Mr. John L. French's.

Q. [Submitting another paper to witness.] I show you a jacket dated November 19, 1878. Whose handwriting is that?—A. [After examining the same.] William H. Turner's, except the signature.

Q. And the signature is what?—A. John L. French.

Q. [Submitting another paper to witness.] I show you on the inside of the same paper a paper dated November 19, 1878. Whose handwriting is that indorsement?—A. [After examining the same.] William H. Turner's.

Q. [Submitting another paper to the witness.] I show you a jacket with the date of October 9, 1878. Whose handwriting is that?—A. [After examining same.] That is William H. Turner's, except the signature.

Q. Whose handwriting is the signature?—A. General Brady's.

Q. Thomas J. Brady's?—A. Yes, sir.

Q. [Submitting another paper to the witness.] I show you inside another jacket with the date of October, 1878. Whose handwriting is that?—A. [After examining the same.] William H. Turner's.

Q. [Submitting another paper to the witness.] I show you a paper here in the same jacket dated October 28, 1878. Whose handwriting is that?—A. [After examining the same.] William H. Turner's.

Q. [Submitting other papers to the witness.] I show you two loose sheets of figures from the same jacket with 44155 on the back. In whose handwriting are those?—A. [After examining the same.] Those are William H. Turner's.

Q. [Submitting another paper to the witness.] I show you a paper in the same jacket dated October 17, 1878. In whose handwriting is that?—A. [After examining the same.] William H. Turner's.

Q. [Submitting another paper to the witness.] I show you a paper with the date in red ink in the middle of the page October 23, 1878, and ask you in whose handwriting is the red ink portion?—A. [After examining the same.] William H. Turner's.

Q. [Submitting a paper.] I show you a jacket dated January 17, 1879, and ask you in whose handwriting it is?—A. That is William H. Turner's except the signature, which is General Brady's.

Q. [Submitting another paper.] I show you a jacket dated June 27, 1879, and ask you whose handwriting that is?—A. William H. Turner's.

Q. Across this is written "Do this—Brady." In whose handwriting is that?—A. General Brady's.

Q. On the back in black ink is the word "Brady." In whose handwriting is that?—A. General Brady's.

Q. [Submitting a paper.] From this jacket I show you a paper dated November 3d, 1878, at the top. In whose handwriting is that indorsement?—A. Wm. H. Turner's.

Q. [Submitting another paper.] I show you another from the same jacket dated 1879, April 10. In whose handwriting is that?—A. That is my own.

Q. [Submitting another paper.] I show you another from the same jacket dated June 27, 1879. Whose writing is that?—A. That is my own.

Q. [Submitting another paper.] I show you another from the same jacket dated April 23, 1879. In whose handwriting is that?—A. That is my own.

Q. [Submitting another paper.] I show you another from the same jacket, dated April 10, 1879. In whose handwriting is that?—A. That is mine.

Q. [Submitting another paper.] I hand you another paper, dated April 10, 1879. Whose handwriting is that?—A. That is my own.

Q. [Submitting another paper.] I show you a jacket dated April 10, 1880. In whose handwriting is that?—A. William H. Turner's, except the signature, and that is Mr. French's.

Q. [Submitting another paper.] I show you a jacket dated July 10, 1880. In whose handwriting is that?—A. Mr. Turner's, except the signature, and that is General Brady's.

Q. [Submitting another paper.] I show you a paper dated May 1, 1881. In whose handwriting is that?—A. That is my own.

Q. [Submitting another paper.] I show you a paper dated Oregon, June 6, '81. In whose handwriting is that?—A. I think that is Mr. Sweeney's.

Q. [Submitting another paper.] I show you another paper indorsed in the same way. Whose is that?—A. I think they are both Mr. Sweeney's.

Q. What Mr. Sweeney?—A. Mr. George M. Sweeney, the corresponding clerk of that section.

Q. I show you a jacket dated July 7, 1881. In whose handwriting is that?—A. Mr. Sweeney's.

Q. George M. Sweeney's?—A. Yes, sir; except the signature.

Q. Whose is that?—A. Mr. Lyman's, the chief clerk.

Q. [Submitting a paper.] I show you a jacket dated July 22, 1881. In whose handwriting is that?—A. Mr. Sweeney's, except the signature, and that is Mr. Lyman's.

Q. [Submitting a paper.] I show you a paper indorsed "Oreg., July 7, '81." In whose handwriting is that?—A. Mr. Sweeney's.

Q. It is stamped on the inside in blue. Do you know the stamp?—A. That is the department stamp.

Q. Showing what?—A. Showing the date of the receipt of the paper.

Q. [Submitting another paper.] I show you a paper indorsed "Oreg., July 29, '81." In whose handwriting is that indorsement?—A. Mr. Sweeney's.

Q. [Submitting another paper.] I show you another paper, indorsed "Oreg., July 14, '81." In whose handwriting is the indorsement?—A. That in red is Mr. Sweeney's.

Q. [Submitting another paper.] I show you another paper indorsed

in red "Oreg., 7, 29, '81." In whose handwriting is that?—A. Mr. Sweeny's.

Q. [Submitting another paper.] I show you a paper dated July 27, 1878. In whose handwriting is that?—A. Mr. Turner's.

Q. William H. Turner?—A. Yes, sir.

Q. [Submitting another paper.] I show you a paper dated August 26, 1878. In whose handwriting is that?—A. That is Mr. Turner's.

Q. [Submitting another paper.] I show you a paper dated August 31, 1878. In whose handwriting is that?—A. Mr. Turner's.

Q. [Submitting another paper.] I show you a paper dated April 17, 1879. In whose handwriting is that?—A. That is my own.

Q. And whose on the back?—A. General Brady's.

Q. The word "Turner"?—A. Yes, sir.

Q. [Submitting another paper.] I show you a paper dated April 17, 1879. In whose handwriting is that?—A. That is my own.

Mr. TOTTEN. Will it be too much trouble for you to tell me how many papers there are?

Mr. BLISS. I will tell you in a minute. One of the counsel has just had the papers in the other route and I would like to put them back where they belong. Do you want me to tell you how many papers there are counting each jacket as one or the papers inside?

Mr. TOTTEN. I would like to know how many are identified.

Mr. BLISS. [After counting the papers.] I count thirty-nine. I count the two papers of figures as two, and in certain cases where he identified part of the paper and the others were not identified, I count that simply as one. I find I omitted one paper, supposing a jacket was empty.

Q. [Submitting paper to witness.] I show you a paper in the jacket dated July 16, 1880, and will ask you to state in whose handwriting it is.—A. It is General Brady's.

Q. How long have you been in your present position?—A. I have been at my present desk about a year.

Q. What is your present desk?—A. I am corresponding clerk for North and South Carolina and Georgia.

Q. Prior to that time what were you?—A. I was route book clerk on the Pacific section.

Q. And where prior to that?—A. Prior to that I was corresponding clerk for Virginia, West Virginia, and Maryland.

Q. Do you recognize these papers that I have shown you as having seen them before?—A. I should recognize them as papers of the department.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Do you know when these papers were taken from the files of the department?—A. No, sir; I could not give you the date.

Q. Were you connected with that section at the time they were taken from the files?—A. I was connected with that section up to June, 1881.

Q. Were you there when they were taken from the files?—A. I cannot say whether those papers were taken while I was there or after.

Q. Do you know whether these are all the papers that pertain to this particular route?—A. A I could not say; no, sir.

Mr. BLISS. I can say to you, if you will take the admission, that they are not.

Mr. WILSON. Where are the rest of them.

Mr. BLISS. They are simply papers that I do not propose to identify. You can put them in your case when you get there, They will be at your service.

Mr. WILSON. Will you let us see them?

Mr. BLISS. No, sir; not now.

Mr. WILSON. Why?

Mr. BLISS. Because this is our case and not yours.

Mr. WILSON. Yet they are papers that affect our side of the case.

Mr. BLISS. I do not say that they do; but they are papers on this route with which I do not propose to encumber the record. When you get to your case, if you want to put them in, they are all at your service to put them in.

Mr. WILSON. If you will let us have them we will examine them. Have you them here?

Mr. BLISS. I decline to produce them at present. I believe I have proved every paper that relates to any order made in this case with which we expect to connect Brady or anybody here. Whether those papers hurt or help the prosecution, I believe I have got every one here and propose to put every paper in.

Mr. WILSON. Now, if your honor please, I protest against the counsel being the judge of that matter. We are entitled to have these papers here, so that when this witness comes upon the stand, and when these papers go before the jury the whole files may go too; and we want them.

The COURT. I think myself that the papers not produced here, if they are in the possession of the counsel for the prosecution, ought to be restored to the department, so that the other party may look at them.

Mr. BLISS. We will do that, or give them to them right out of court, but we will not produce them here now.

Mr. WILSON. He says he will not produce them here now. I say we are entitled to these files intact. It is not for them to pick out particular papers, and keep the balance back in their office where we cannot see them. It is not fair, and it is not conducive to justice, for one of the counsel in this case to undertake to go through these files and pick out such papers as suit him and bring them here, and then say to us, "I will not produce the others."

The COURT. But there may be, and probably are, in all these files a great mass of papers that do not relate to the case; still, after selecting the papers that are useful or may be useful to the prosecution, I think the balance ought to be returned directly to the department, so that the counsel may have the opportunity to examine them, and culling out such as would suit them.

Mr. BLISS. They shall have them, sir, in that way, or any other way that they want them to examine them.

Mr. WILSON. Hold on a minute. I want to bring this matter further to the attention of the court. The files of this route were taken out of the Post-Office Department. They have been in the Department of Justice for perhaps a year. They come here and question this witness upon the stand, and show him these papers, and ask him if they come from the department. Now, I say that those files, as they took them out of the department ought to be here, and that it is not for us to be required to apply to the Post-Office Department or the Department of Justice. When they bring this case here, they ought to bring these files here, so that we can have an opportunity of seeing them.

The COURT. If the papers were all thrown down here, the court

could not delay the progress of the trial to allow you to examine a mass of papers before you cross-examined the witness. It seems to me it would be more for your advantage, and would better facilitate the trial if the papers which they do not use are restored to the department. Then you can go there and examine them, and after that examination bring such as may suit you to the court.

Mr. MERRICK. Allow me to say a single word.

Mr. WILSON. Let me get through.

The COURT. Let Mr. Wilson get through. This is his talk and mine.

Mr. MERRICK. I thought he was through. I haven't a word to say until he concludes.

Mr. WILSON. Here they are putting in this bundle of papers. We are comforted with the assurance that five or six weeks from now the jury can have the balance of the truth in this case.

The COURT. Is it not so always?

Mr. WILSON. I think not, if your honor please. As a matter of justice, I respectfully submit to the court that when they come here and put in a lot of papers, every paper that relates to this matter ought to go to the jury now, so that the jury can judge of this thing as it is, and not be laboring under delusion and the want of information for some five or six weeks, perhaps, before we can have an opportunity of laying the truth before them. In fact, where is the objection to it? Is it not fair, is it not right that this jury should know these facts right now?

The COURT. But here is a practical inconvenience. If they were to bring all the papers here and use one-third or one-quarter of the number and the others were lying around the table you could not use them. The trial is going on and we are getting in the evidence for the prosecution. There would be no opportunity for you to make an examination of those papers to ascertain whether they were useful to you or not.

Mr. WILSON. If your honor please, the trial does not go on any faster than is necessary to get at the truth; it is not to be rushed through. If we had all these papers here, and there was any paper in those files that was essential to the ascertainment of truth, when they were putting in the others, your honor would allow them to go in, too.

The COURT. The court could not go into that investigation at this time. We must have the prosecution put in their case first, and I could not take up the other papers to ascertain whether they ought to go in or not.

Mr. WILSON. But if they were here, and I could pick one up and say to the court, "Here is a paper that is essential to the proper understanding of the case," would not the court allow that to go right in along with the other papers?

The COURT. I do not know. I can imagine a case in which it might be proper to put in another paper as explanatory or by way of cross-examination of a witness.

Mr. WILSON. If they were right here before us would it not be required to put in every petition recommending this route?

Mr. BLISS. I say they are all in.

The COURT. I do not look upon these files at all as records such as the records of a court are. When you want the exemplification of a record of a court it must be complete, containing all the papers from the beginning to the end. There is no complete record unless all the papers are in. But these files of the department are not of that nature,

nor are they given in evidence now on any such theory as a record of the court is admitted in evidence as a record between the parties. Here is a public office filled with papers relating to post-routes in all parts of the country of, I do not know how many hundred thousand. These papers are accessible for purposes of justice to both sides.

Mr. TOTTEN. Your honor is mistaken about that.

Mr. MERRICK. If your honor please, if Mr. Wilson is through I beg to say a word.

The COURT. This prosecution is not based upon any averment that there is such record. Of course, no particular record is exhibited, and no particular paper is exhibited. But these papers are admitted in order to show that the two officers of the Government involved in this prosecution were cognizant of the contents of those papers and for the purpose of sustaining the charge of fraudulent conduct or fraudulent knowledge, and for the purpose also of showing what the others have done with the papers communicated by them to the department. But the Government is not obliged to use all those papers or to give them all in evidence.

Mr. TOTTEN. Your honor allowed them to put these things in simply for the purpose of giving them a standing in court at this time, and said that they might introduce this loose testimony for a general purpose to show general circumstances in order that the court might be advised whether there was something to conspire about. Now, your honor, I say that when they bring the papers in which relate to a given route they ought in all decency and fairness bring them all here. They have got the custody of them. Take the case of brother Nephi, for instance. Brother Nephi sent a petition one day for a certain expedition, and the next day he complained about it, and said it was going too fast for him. Would your honor, for the purpose of arriving at a conclusion as to what these public functionaries had before them when they acted, allow these gentlemen to produce one of those petitions and exclude the other from our observation and consideration?

Mr. MERRICK. Were they not brought in?

Mr. TOTTEN. Certainly; but we are talking about this case, as to this particular route. We want all the papers.

The COURT. If the court knew the other side wanted any particular paper that was of importance to their defense the court would lay a rule upon the Government to produce it.

Mr. TOTTEN. Oh, yes; but we are in this dilemma——

The COURT. [Interposing.] You are in the dark on that subject.

Mr. TOTTEN. Certainly; we know nothing about it.

The COURT. And can only obtain light from the files of the department. I think these parties can only afford you light by a restoration of these papers to their proper place in the department.

Mr. TOTTEN. That is true, your honor; but I say that your honor has the power in this preliminary examination which we are now conducting to say to these gentlemen, "When you go into this new route you must bring the files which pertain to that route, and let us see what excuse these public functionaries have for their action." It is a matter of public account; it is a public record in which you, and I, and every other citizen has as much interest as the plaintiff or their representatives. We are not here for the purpose of persecuting, nor are these prosecuting officers. They are here for the purpose of arriving at the truth, and enabling this court to get at what the facts are. I say that in all propriety every paper relating to this route should be brought here.

The COURT. There has been so much courtesy observed between counsel here that I have no doubt it would not be a proper field for the court—

Mr. MERRICK. [Interposing.] I want to make a single remark. The counsel on the other side have been regaling themselves with innuendoes against the counsel for the Government.

Mr. TOTTEN. Oh, no.

Mr. MERRICK. Nearly all the remarks from beginning to end were of that character. In the first place, counsel have had access to these papers for the last two months. Mr. Wilson has himself been in the office time and again examining the papers, and has had access to every paper, which he could have commanded at any minute on an order from the department and from the counsel for the Government, and under information to him directly from the Government counsel. Now, we have offered on this route, as we have on the other routes heretofore, and as we shall on those that come after, every single paper that bears upon any order passed by the Second Assistant Postmaster-General in reference to the matters of inquiry here; every paper whether on one side or on the other. When Mr. Totten just now wanted to make an illustration by something that had already transpired in a route gone through with, he had to illustrate it by two petitions, both of which we brought into court. I defy the counsel on the other side, when going through the papers and ransacking them from beginning to end, to find any paper bearing on the question before the court, which the Government counsel has not brought here. These imputations are unjust and unfounded. There are numerous papers which might crowd the desk of the court, and which would embarrass both court and counsel to search through. We go through with that labor, and we bring here such papers as, in our judgment, bear on their side, and, in our opinion, are proper evidence on our part of the case; not only evidence for our part of the case, but evidence for the other side of the case; papers that bear upon any matter or point made in the indictment against these parties. The papers will be in the department, and counsel can have access to them, and look at them if they want to. The imputations are unjust, and the accusations unfair and unwarranted as well as unprofessional.

Mr. WILSON. If your honor please, the counsel says they bring here such papers as in their judgment bear upon this case either in one way or the other.

Mr. MERRICK. All papers having reference to and prior to the date of any order.

Mr. WILSON. Which in their judgment bear on this case.

Mr. MERRICK. I modify and enlarge it by saying all papers prior to the passage of an order bearing upon the order.

Mr. WILSON. I entered my protest a while ago against being required to stand by their judgment upon that subject. We have a right to exercise our judgment and opinion as to whether or not a paper is important.

Mr. MERRICK. Go to the department and look at the papers.

The COURT. Well, now, not so much noise.

Mr. WILSON. I want to say another word. Mr. Merrick has said I have had access to these papers for two months. I have spent two days in the examination of these papers. I had access then to such papers as Mr. Woodward saw fit to hand over to the clerk who assisted me.

Mr. MERRICK. [To Mr. Woodward.] Did you not give all that were called for to them?

Mr. WOODWARD. Yes, sir.

The COURT. Here is the point——

Mr. MERRICK. [Interposing.] That is not a fair statement, if your honor please; Mr. Woodward is here and corrects it.

The COURT. But he is not under oath. They are not obliged to take your say as to that. The proper way to do, in my opinion, is to restore to the department all the papers that you do not want, and allow them to examine them for themselves.

Mr. MERRICK. Certainly.

The COURT. They are not obliged to take your averment.

Mr. MERRICK. I do not want them to; let them go to the department and find such papers as they want.

The COURT. If you were to bring into court all the papers that belong to the case and lay them down upon the table they might say. "These are not all."

Mr. MERRICK. Certainly; and they would.

Mr. HENKLE. Now, if the court please, I want to say one word.

The COURT. Is it an important one?

Mr. HENKLE. I am not going to argue at all.

Mr. MERRICK. I shall ask the privilege of a reply.

Mr. HENKLE. I have never had an opportunity of seeing any of the papers, and yet my client is directly involved in the matter.

Mr. MERRICK. You have not sought an opportunity.

Mr. HENKLE. I propose that the gentleman shall leave the papers in the possession of the clerk and let us examine them now.

Mr. MERRICK. That was all settled.

The COURT. The difficulty about that is simply this: It is a difficulty of so much practical importance that the court can't get over it. If they were to bring into court now all the papers in the case your attention would be called to a bushel of papers. You would call upon the court to delay the proceeding with the evidence before the jury on the part of the Government until you could overhaul this bushel of papers; and in the whole you might not find a single paper that you wanted.

Mr. HENKLE. I am not asking the court to delay one moment; but only that the papers shall be left in the custody of the court upon the route that they are now proposing to examine, so that we may have an opportunity to examine them after the court adjourns. I never have seen one of the papers in this case.

Mr. BLISS. Permit me to say that under the law the Postmaster-General is the custodian of these papers. He cannot leave them to the clerk of the court or anything of that kind. They can have access to them.

The COURT. There is this objection to that course: They might say, "You have not brought into court all the papers in the case." If the papers are restored to the department, then they can go to the department and see all the papers that belong there.

Mr. BLISS. Inasmuch as I have had the custody of these papers, permit me to show to your honor the character of those I hold in my hand and which they say we are withholding. Here is one for instance, where the postmaster reports that the order to supply Robinsonville and Granite without increase of service or pay has been complied with; that subsequently under an order to omit Robinsonville it has been omitted; that mail service to Granite has been omitted under the order to omit Granite. None of these matters have anything to do with the case. Somebody asks that the name of a post-office be changed; that a post-office be supplied by a side supply off this route; and then another person asks for continuous service. Then comes the order to em-

brace Granite. Then somebody wants to know why his bid was not accepted. And then somebody wants to know about distance circulars. Then come the proposals. So far as I am concerned I am ready to present any paper that I know of on this route that relates to the matter in controversy.

The COURT. Yes; but it is very true, as Judge Wilson says, that they are not obliged to take your say so.

Mr. BLISS. But he is asking me to produce certain papers. I say that here are all I can produce.

The COURT. He has not asked you to produce certain papers.

Mr. BLISS. He has asked for all, and I say that is all.

Mr. HENKLE. I ask that I may have an opportunity to examine these papers to-night.

Mr. BLISS. You can have it at the Post-Office Department. We will restore them to the files of the department.

Mr. HENKLE. Can I get in there to-night?

Mr. BLISS. I do not know whether you can or not. I will say to you further, that if you will assume that the counsel in this case have common honesty, and will come to my office you shall have all the papers in my possession to examine in any way that you want to to-night.

Mr. TOTTEN. Where is your office?

Mr. BLISS. I thought the gentlemen knew where it is.

Mr. HENKLE. I really do not.

Mr. BLISS. It is in the Post-Office Department, room 22. I will be there to-night any time up till 5 o'clock. You cannot expect a public office to be open after that. If you will not find fault with the fact that I take the papers to my home, I will take them there and give you access to them any time between this and morning.

Mr. HENKLE. How late will you be at your office at the Post-Office Department?

Mr. BLISS. I should like to leave there at 5 o'clock.

Mr. TOTTEN. We will have to take your word for it that they are all there.

Mr. BLISS. I do not want you to take my word for anything.

Mr. WILSON. If your honor please, I would like to know upon what principle in this case it is that Colonel Bliss can be entitled to carry these papers around from the department to the Arlington, and wherever he pleases, and General Henkle cannot be trusted with them.

The COURT. That is one of the secrets of the Post-Office Department.

Mr. MERRICK. It is after 3 o'clock. I think the only matter in order is to go home to dinner.

The COURT. Let us understand about this matter first.

Mr. WILSON. Mr. Bliss is no officer of the Post-Office Department. He is connected with another department of the Government that has nothing to do with these papers. He is simply counsel on this case on one side. He is carrying these papers about town. I do not know upon what principle he can be permitted to have them in his custody to do with them as he pleases, and yet General Henkle cannot have them.

Mr. BLISS. The gentleman does not know what I am officer of and what I am not an officer of.

Mr. WILSON. Are you an officer of the Post-Office Department?

Mr. BLISS. I am not on the witness stand to be questioned by you. I am in proper possession of these papers, and will give you access to them.

Mr. TOTTEN. We will put him on his oath.

shall be accessible to him there so long as he desires to see them if it is till to-morrow morning at daybreak.

Mr. HENKLE. All right.

Mr. TOTTEN. The infirmity in that suggestion is this: I might go there and look over the papers for five or six hours, and yet could not detect the fact that a paper was not there in brother Bliss's office. If General Henkle and I were to go, and take along a man who does know and could tell us all about it, then we might be told, as we were before, that they will let the counsel in who know nothing about it, but not the agents who do.

Mr. MERRICK. They have had enough to do with the Post-Office Department.

Mr. TOTTEN. I don't know about that.

The COURT. It seems to me that after the Government has shown what papers it wants for the purpose of prosecuting the case, and if the gentlemen think they can find any material for the defense in the files, they can go there and examine for themselves.

Mr. TOTTEN. What authority will your honor send along to me? The Postmaster-General or the department let us look.

The COURT. I do not know that the court is bound to answer any question now, because the occasion for it has not arisen. If you maintain that the Post-Office Department, or any other department of the Government, has possession of original papers that are necessary to your defense, and if you make a request for the use of those papers for that purpose and are refused, this court would stop the prosecution instantly until the papers were produced.

Mr. MERRICK. We all agree about that.

The COURT. I think I gave a similar notice at a very early stage in this case.

Mr. MERRICK. Certainly you did. You said it a half a dozen times and we appreciate it as perfectly proper and authoritative.

Mr. TOTTEN. He will bring such papers as he pleases, and take

TUESDAY, JUNE 20, 1882.

The court met at 10 o'clock a. m.

Present, counsel for the Government and for the defendants.

The examination of BYRON C. COON was resumed as follows:

By Mr. WILSON:

Question. Will you please state to the jury what position you occupied during the years 1879, 1880, and 1881.—Answer. I was route-book clerk of the Pacific section.

Q. If a post-office is discontinued, or if a route is shortened, or lengthened, where do you get your information in regard to that matter?—

A. We get an order to discontinue from the appointment office; First Assistant's.

Q. Now, when the First Assistant discontinues an office, then what is the course of business with regard to that discontinuance? Where does it go first?—A. It goes to the route-book clerk, contract office.

Q. Is it not to the journal clerk?—A. It goes to the journal clerk first, and from him to the route-book clerk.

Q. The journal clerk makes a copy of the order discontinuing if it is a discontinuance, does he?—A. Yes, sir.

Q. Then it goes to the route-book clerk?—A. Yes, sir.

Q. Now, suppose an office is established on a route whereby the distance is increased, what is done then?—A. It takes the same course.

Q. The same course exactly?—A. Yes, sir.

Q. In the first place the office is established by the First Assistant?—A. Yes, sir.

Q. And then it goes to the journal clerk?—A. Yes, sir.

Q. And from the journal clerk to the route-book clerk?—A. Yes, sir.

Q. So that whether it is an increase of the distance or a diminution of the distance it takes exactly the same course?—A. It takes the same course; yes, sir.

Q. Now, where there is a decrease in the distance, what happens with reference to the contractor?—A. The route-book clerk notifies the corresponding clerk, and makes up a short brief stating the discontinuance of the office, and the corresponding clerk makes an order to omit that much of the route.

Q. And then there is a month's extra pay allowed to the contractor for an amount equivalent to the extent of the decrease of the service?—A. Yes, sir.

Q. [Submitting a bundle of papers to the witness.] I show you a paper which is marked 9 C, on the route from Toquerville to Adairville; look at that writing in red ink, and say whose it is.—A. The red ink is my writing.

Q. You will observe there some figures through which a pen is drawn; just repeat the figures to the jury?—A. 3,504; those are the figures that I made.

Q. Was that done by you?—A. Yes, sir.

Q. Did you make up the report upon which the curtailment and allowance of a month's extra pay was made?—A. Yes, sir; I made this report of the discontinuance of the office.

Q. The brief that you made there represents the contractor's pay to be \$3,504 per annum. Looking at it now, it appears that the \$3,504 per

annum has been erased, and \$20,894.22 inserted; will you please explain that.—A. It is possible that in the mean time the route was changed; perhaps an increase of service, or something of that kind, increasing the pay.

Q. And that having come to your knowledge, you changed the figure to correspond with the pay on the route at the time that you made up the brief; is that correct?—A. Well, I did not change the pay, but I presume that when this case came to Captain Turner that he changed it himself, knowing of some change having been made in the pay of the contractor.

Q. That is to say, if some time before that was done there had been a change made in the pay of the contractor it would be made up according to what his pay was at the time this brief was made?—A. Yes, sir; I made up this case from the pay as indicated on the books when I made up the case; but in the mean time an order of increase might have been made, and not come back and been entered upon the books.

Q. Now, see if you have not got the order in your hands?—A. [Examining the papers.] I have an order here of October 10, 1878, to increase the service two trips per week. Ex. in.

Q. Look and see if you do not find another one there.—A. [After further examination.] Yes, sir; here is an order of increase and expedition of July 8, 1879.

Q. Making the pay how much?—A. The increase allows \$4,672, and the expedition \$12,718.22.

Q. Making the aggregate of the whole pay how much?—A. Something in the neighborhood of \$20,000.

Q. See if it is not exactly \$20,894.22. Just figure it up.—A. [After making the calculation.] Yes, sir; that seems to be the same amount.

Q. How long would it ordinarily be from the time that an order was made by the Second Assistant, increasing the pay, before it would reach the route-book clerk?—A. Well, it would probably be ten days or two weeks.

Q. Sometimes longer than two weeks?—A. It might be longer than that.

Q. Then, do you have it sometimes a week or two before you record it?—A. I might have it sometimes a week or two; yes, sir.

Q. So that after this route is curtailed, and before it reaches the route-book clerk, there may be a change in the pay?—A. Yes, sir.

Q. Which would necessitate a change in the brief?—A. Yes, sir.

Q. Now, I want you to look at that paper and say if that is not exactly the case here as to this very matter we have been talking about.

—A. The order of increase and expedition was made July 8, 1879, and the brief that reported the discontinuance of the office at Toquerville—or rather that order—was made on the 14th.

Q. It is Adairville instead of Toquerville, is it not?—A. Adairville; yes, sir.

By the COURT:

Q. What do you say the date of your brief was?—A. I did not make the brief myself. I reported to Captain Turner, and then he made the order under the brief. It was July 14, 1879.

By Mr. WILSON:

Q. When you made up your brief, you made it up as the route-book then showed the pay to be?—A. Yes, sir.

Q. Now look at that order and see if it is not the fact that the pay had been increased before you made up that brief, but had not yet come

to your desk ?—A. Well, the fact of the order of increase and expedition having been made on the 8th of July, and the order under which my brief was made being dated July 14, makes me conclude that the order of increase and expedition had not been entered on the books when I made the brief.

Q. And that made it necessary for the change to be made in the brief ?—A. Yes, sir.

Q. Suppose that that order of increase and expedition had reached your books, would you have made the entry there as it is ?—A. I would have made it as corrected.

Q. What is the practice of the office with reference to notifying the contractor where there is a reduction of the length of a route or an increase of it ?—A. We send him a notice when an order is made.

Q. Now, when you send him a notice that you have reduced the length of a route, you then make up the statements allowing him a month's extra pay to the extent to which it is reduced, do you not ?—A. Yes, sir.

Q. How long has that been the practice of the department, as far as you know ?—A. It always has been, as far as I know.

Q. Did you ever know of anything different from that ?—A. Not to my knowledge ; no, sir.

Q. Now, in the matter of these papers that are exhibited to you, I wish you to state whether there is anything unusual, or out of the ordinary course of business in connection with them in any manner, shape, or form.

Mr. BLISS and Mr. MERRICK. Oh, no.

Mr. BLISS. We object to that.

Mr. MERRICK. Let us have the facts and what is the usual course of business, and we will determine.

The COURT. Yes ; prove the facts. We do not want his opinion.

Mr. WILSON. I suppose that he, having been there for a long time in the department, and knowing exactly what the course of business is, might be asked by us whether this is in exact accordance with the usual course of business.

The COURT. You have got the facts as well as he has them.

Mr. WILSON. We have proven what the course of business is, and I want to know whether this that has been done here is according to the usual course of business in his office. He knows it as a fact.

Mr. MERRICK. If your honor please, when the course of business is proved that is all right. Then what has been done is proved, and that is all right. Whether what has been done is in accordance with the course of business as proved, the jury must judge, under your honor's direction. But as to his opinion as to whether what has been done is in accordance with the general course of business, he simply exercises the power of forming an opinion and expressing his opinion upon facts given to the jury for their opinion. Evidently the opinion is a conclusion from the evidence, and that is not for him to form.

The COURT. Still an experienced clerk in an office knows how this business is done when the facts are presented to him. It seems to me a fair question to ask him.

Mr. MERRICK. I do not know what his answer will be, but it does not seem to me to be a proper question.

The COURT. It seems to me that it may be proper.

Mr. BLISS. I would like to have the question read.

The stenographer read the question as follows :

Q. In the matter of these papers that are exhibited to you I wish you to state whether there is anything unusual or out of the ordinary course of business in connection with them in any manner, shape, or form.

Mr. BLISS. At that time the witness had in his possession the entire file of papers connected with this route. I suggest that the question should be limited, to what papers. He said "these papers."

The COURT. He has been referring to only two papers.

Mr. WILSON. Very well. [To the witness.] I will say to these papers that I have shown you. I will limit the question to that.

A. I see nothing unusual about them.

Q. Is it according to the usual course of business there?—A. Yes, sir; it seems to me so.

Q. That has prevailed for a long time?—A. Yes, sir.

By Mr. BLISS :

Q. Have you any recollection of this particular transaction of briefing and change?—A. No, sir; I have no special recollection in regard to it.

Q. Your inference, then, is an inference from the dates that you find upon the papers?—A. Yes, sir; the dates and the regular routine of the office.

Q. Do I understand you that when a post-office has been discontinued, say on the 19th of June, and after that, on the 8th of the following month, expedition is ordered extending over the entire route, including a portion of the route where the post-office has been discontinued, being ten miles from the end of the route, that it is the usual practice on such a condition of things on the 12th of July, the same month, to give pay for taking off the ten miles and to reckon that pay on the expedited schedule which did not commence until twenty days after? Is that the ordinary practice of the office; did you ever know of such a case as that?—A. Well, the curtailment of the route, I believe, takes effect from the time of the discontinuance of the office, or near that day.

Q. Did you ever know of a case of that kind, the office discontinued, say on the 20th of June, that office being the terminal office and ten miles from the next preceding office, and on the 8th of July expedition ordered to extend over the entire route, including the ten miles, and then on the 12th of July the ten miles in form cut off and the month's extra pay for the expedited time allowed, though the expedited time was not to commence until the 1st of August?—A. Well, I should not presume that the month's extra pay would date back any further than the discontinuance of the office.

Q. Suppose the whole route had been discontinued, except ten miles, under such circumstances as I have stated, there never having been any expedition over any portion of the route; would it be the practice of the office to allow the month's extra pay on the expedited time?—A. No; I should presume not.

Q. Did you ever know of case like this, where an office having been discontinued at the end of a route, and therefore ten miles left where there was no supply, and after that time an order for expedition, and then an order to allow the month's extra pay and the month's extra pay being estimated on the expedited rate, though the service had not commenced when the month's extra pay was allowed?—A. That might depend on the—

Q. [Interposing.] I ask whether, under the practice of the office, you ever knew of a case of that kind.

Mr. TOTTEN. Let him answer the question.

Mr. BLISS. I want him to.

Q. Did you ever know of a case of that kind ?—A. I don't know that I have; I couldn't say that I have.

Mr. WILSON. Go on and explain.

The COURT. He can explain.

Mr. BLISS. I do not object to that.

Mr. MERRICK. Certainly he can explain. He says he never did.

Mr. HENKLE. [To the witness.] Just go on and say what you were going to state.

Mr. MERRICK. Make any explanation you want.

The WITNESS. I was going to say that probably the allowance of extra pay on the expedition would depend altogether on the date of the discontinuance of the service; the date it would take effect.

By Mr. WILSON:

Q. As soon as the service is discontinued the contractor is notified, is he not ?—A. Yes, sir.

Q. And then you make up his month's extra pay according to the service at the time it is discontinued ?—A. Yes, sir.

Q. If the schedule is expedited the same thing happens, does it not ?

Mr. MERRICK. What same thing ?

Mr. WILSON. The month's extra pay.

A. The month's extra pay is always allowed on a reduction.

Q. And if they discontinue the entire route exactly the same thing happens, does it not ?—A. Yes, sir.

Q. And that has been the universal practice of the department, has it not ?—A. I think it has, so far as I know.

Q. If it is discontinued after it is expedited they allow them, then, a month's extra pay, do they not, for the whole service ?—A. If the expedition has commenced, I suppose they do.

Q. But if the contractor has been notified of the commencement, then he becomes entitled to this extra pay, does he not ?—A. He does after the date on which the expedition takes effect.

The COURT. I think you have got the understanding of the witness.

By Mr. BLISS:

Q. Suppose the order increases trips as well as speed and there comes, in such a condition of things as this, a time when there is a discontinuance. Do you allow the percentage of the increase of trips? The route having been run at three trips a week and never run at anything greater, then there comes an order of expedition and the trips increased to seven, and then four days afterwards there comes a formal order for the discontinuance of ten miles, the order for increase to seven trips and increase of speed not taking effect until the 1st of August following. Do you under those circumstances allow the month's extra pay based upon the proposed sum for the increase of trips ?—A. We allow the month's extra pay on the service actually being performed.

Mr. WILSON. Actually being performed ?

Mr. MERRICK. Yes, sir.

The WITNESS. I understand it so; yes, sir.

By Mr. WILSON:

Q. I will put a case to you; suppose the contract is entered into on the 1st of April, to take effect on the 1st of July, that is to say, the service begins on the 1st of July. Suppose, that on the 1st of May

ease the trips -
ration, and fifteen days -
Now, on the 1st day of May you -
have notified the contractor. He has not -
because his contract does not begin to go into operation -
July. Now, fifteen days before he begins to do any service -
u discontinue the route altogether; on what would you predica -
month's extra pay?
MERRICK. According to the custom in such cases in the office.
WILSON. I want to know upon what the month's extra pay would
calculated.

Mr. MERRICK. According to the custom.
Mr. WILSON. Wait a moment.

Mr. MERRICK. No.
The COURT. It is according to the practice of the office.

Mr. WILSON. I am putting my question.
Mr. MERRICK. I am modifying the question.
Mr. WILSON. You have no right to modify my question.
Mr. MERRICK. Then I object to the question. He asks the witness
what he would do in a hypothetical case which takes him out of the
range of the practice of the office. My only purpose in interrupting
was to correct a possible mistake of brother Wilson and bring the
question within the practice of the office. That is all. The question
should be: What would be done in such a case according to the prac-
tice of the office as you know that practice; not what you would do.
Mr. TOTTEN. The question, your honor, here is whether we shall
cross-examine this witness or whether they shall dictate as to how we shall put our
question. The witness is an expert.

Mr. MERRICK. I objected to the question.

Mr. TOTTEN. Very well; we insist upon the question.

Mr. TOTTEN. I have stated my reasons, and that is all right.

Mr. TOTTEN. We do not want any addenda put to our questions by
way of cross-examination.

Mr. MERRICK. Then I was wrong in supposing it to be an error. The
question was put intentionally.

Mr. TOTTEN. We ask all our questions intentionally.

Mr. MERRICK. I supposed you would not ask an unfair question.

The COURT. [To Mr. Wilson.] You can put the question.

Q. Suppose a contract is entered into on the 1st day of April, the
service to begin on the 1st day of July, one trip a week. Now, on the
1st of May the trips are increased to seven, and the contractor is notified
fifteen days later that the entire service is discontinued under that con-
tract so that the service never does begin at all. Now, the contractor
is entitled to a month's extra pay, one trip or seven.

Mr. MERRICK. I object to the question. "I want to know," say
Mr. Wilson, "upon what you calculate that pay?"

The COURT. I suppose he means the practice of the office.

Mr. WILSON. Why, of course. Nobody ever dreamed of anything
else.

Mr. MERRICK. Then there could have been no objection at all to
modification of the question, as I made it, because it only made
more distinct to the witness. What is the practice of the office?

The COURT. We will have the question asked in that way.

Mr. MERRICK. I ask your honor to instruct the witness to answer according to the practice of the office.

The COURT. I think the question contemplates that.

Mr. WILSON. It could not have contemplated anything else.

Mr. MERRICK. Then there was no occasion for so much discussion.

Mr. WILSON. There was no occasion for Mr. Merrick to interfere.

A. I never had a case of that sort, and I don't know exactly what I could do.

Q. You know this, do you not, that prior to the time the service goes into operation, after it has been advertised for, after the contract has been made and before the service is put on, you are continually making changes in trips, &c., are you not?—**A.** Yes, sir.

Q. You issue a bulletin showing these changes?—**A.** Yes, sir.

Q. If you know upon what the calculation is made in a case such as I have put, I would be glad to have you state it.—**A.** Well, as I say, I never had a case of that sort. If a case of that sort should come to me I should probably consult the chief clerk before I took any action in regard to it.

Q. In the department the right is recognized under the practice of the office to add to the contract or to take from it, is it not?—**A.** Yes, sir.

Q. That is the universal practice, is it not?—**A.** Yes, sir.

Q. And it is provided for in the contracts I believe. Now, when you add to the contract, add to the service that is to be performed, having notified the contractor that you had added so much to the service that he was to perform, he is regarded in the office as having that much addition to his contract?—**A.** Yes, sir.

Q. It being a part of his contract, is it not?—**A.** Yes, sir.

Q. Now, then, you have got his contract so that he has to perform the service at seven times a week. That is his contract. Now, if after you have made his contract in that way, cutting off that service, do you not allow him his month's extra pay according to what his contract is at the time you cut it off?—**A.** That order of increase from one to six or seven times a week does not take effect until the 1st of July.

Q. But he has to prepare for it before the 1st of July, does he not?—**A.** He may have to prepare for it.

Q. Where he would only have to make preparation for one trip a week you have required him to make preparation for seven trips a week?—**A.** Yes, sir.

Q. So that his contract binds him to be ready——

Mr. MERRICK. [Interposing.] I object. This is arguing with the witness.

The COURT. This witness is not a lawyer, and he is not bound to answer questions of that kind, it seems to me. You have asked him as to the practice of the office, and he says that he is not acquainted with the practice of the office in the class of cases to which you refer.

Mr. WILSON. I am through with the witness.

Mr. MERRICK. That is all.

GEORGE M. SWEENEY recalled and examined.

By Mr. BLISS :

Question. You mentioned to me this morning that some answer of yours, I do not remember what, given on a former examination, you thought was not quite correct. What was it?—**Answer.** I stated that I delivered all the papers on route 41119 to Inspector Woodward on the 7th of September. That is the date of the receipt; but there is one paper there that was

subsequently delivered, that is, the subcontract and the order reporting it.

Q. Are the papers upon the Oregon routes in your charge?—A. Yes, sir; that is, all that I have not delivered.

Q. They are ordinarily in your charge?—A. Yes, sir.

Q. Certain papers on The Dalles and Baker City route were put in yesterday. You handed me a paper this morning. [Submitting a paper to witness.] State how that came to be in your possession.—A. The question of one month's extra pay to the subcontractor at the time of this reduction of service was under consideration. This paper had been delivered to Inspector Woodward, I think, and was sent for to submit the subcontract to the Assistant Attorney-General for the Post-Office Department to ascertain whether the subcontractor was entitled to the month's extra pay.

Q. That is the reason that the jacket still remained in your charge?—A. Yes, sir.

Q. [Submitting papers to the witness.] Please look at these papers and see if they are the papers that belong in this jacket?—A. [Returning two papers.] These two papers belong in it. This one does not [returning another]; it belongs to the route.

Q. I see inside of the jacket a memorandum. Is that in your handwriting? [Submitting a paper to the witness.]-A. Yes, sir; that was simply put there to show where the subcontract was.

Q. [Submitting another paper to witness.] Look at the jacket and tell me in whose handwriting it is?—A. The caption in red ink and the writing in the order are in the handwriting of William H. Turner. The signature is by John L. French.

Q. This jacket is dated at the top, October 1st, 1878. Did you, at any time, part with the papers on this route 44155, The Dalles to Baker City, and if so, to whom?—A. On the 7th of September, 1881, they were either sent to Inspector Woodward's room, or he sent up for them.

Q. Did you receive a receipt for them?—A. I did; yes, sir.

Q. [Submitting a bundle of papers to witness.] Please look at these papers and see if you recognize them?—A. [After examining the same.] These papers are all in regard to that route.

Q. Are they papers from the files?—A. Yes, sir.

Q. [Submitting another paper to witness.] I now hand you a paper which has already been marked in evidence 50 A, when Mr. Taylor, the notary, was on the stand, and was withdrawn from the files, and which I have kept separate. See if you recognize the handwriting of the endorsement there?—A. [After examining the same.] This is in the handwriting of William H. Turner, but this is not one of the papers turned over by me.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Did you have any papers in regard to the supplies of Robins and Granite?—A. That I do not know. I know that Granite was braced upon that route, though erroneously. I presume there is something on the files in regard to it.

Q. Do you know where the papers are?—A. I presume they are here or in possession of Mr. Woodward.

Q. Do you know anything of some papers in regard to Robinsville?—A. No; I have no recollection of that office. I think there were

order made embracing Granite. That is all the recollection I have of Granite.

Q. And the papers were in the papers you turned over?—A. The order; yes, sir.

Q. I see that some of these papers that are here have relation to a month's extra pay?—A. Yes, sir.

Q. Suppose that a contract is made on the 1st day of April, the service to be put on the 1st day of July, one trip a week, and that the pay is \$300. Now, suppose you increase that before the 1st of July, say on the 1st of May, to three trips a week. That would make it \$900, would it not?—A. Yes, sir.

Q. Then you notify the contractor, do you?—A. Yes, sir.

Q. That he has to put on service three trips a week?—A. From the 1st of July; yes, sir.

Q. Now, suppose that on the 15th of June you discontinue or take off one trip a week. Upon what would you predicate your calculation as to the month's extra pay?—A. I would not allow any month's extra pay.

Q. You would not allow any month's extra pay at all?—A. The right to modify or rescind an order before it takes effect has always been exercised, and that right is confirmed by an opinion of the Assistant Attorney-General for the Post-Office Department.

Q. How long since that opinion was given?—A. It has been given certainly within nine months, but in the practice of the office I never knew the contrary that the right to rescind an order before it takes effect existed.

Q. Do you not give the contractor that month's extra pay for the additional service you require him to put on?—A. If the order has not taken effect he has not put the service on.

Q. But you make him get ready to put it on?—A. That has been the practice so far as my experience has gone. It has not always been the practice to a great extent. I know some cases where it has been allowed.

Q. Now, suppose that the contractor enters into his contract on the 1st of April to put on the service on the 1st of July, and that that service is entirely discontinued, do you allow him any extra pay?—A. If he has executed his contract, then he is allowed one month's extra pay, whether the service has been commenced or not; but if the route has been awarded to him, and the contract has not been executed, then we simply rescind the acceptance and give him notice.

Q. Yes, but you are talking about one thing and I am talking about another. Now, if he has filed this contract there in the department, and before he puts a horse or a carrier on that route you discontinue that service, what do you do about that?—A. Allow one month's extra pay.

Q. Now, then, if he has signed and filed his contract, say on the 1st day of April, and ten days after that you add to the trips, we will say two, and then, on the 15th of June, you take one of them off, what do you do then in regard to the extra pay?—A. Simply modify that order of April 1, so as to increase service to one trip instead of two, and allow the contractor just half of the original sum, without any extra pay.

Q. You do not allow him any extra pay at all?—A. Not if the order ordering those two additional trips has not taken effect. If on the 2d day of July we want to make that order, then we would allow the month's extra pay on the amount deducted.

Q. That is to say, if the order was made after the 1st of July?—
After the original order took effect.

By the COURT :

Q. If I understand you right, the order allowing expedition is construed in the department as being a part of the contract until at the time in which the expedition is to take effect?—A. The right has been exercised to decrease or to rescind entirely any additional allowance before it takes effect; but on the original contract—

The COURT. That is what I want to know. The witness says that any additional allowance after the contract has been made may be continued prior to the time when it was to go into effect without allowance of the month's extra pay. [To the witness.] That is the way I understand it. Is that right?

The WITNESS. Yes, sir.

Mr. HENKLE. If he makes a discontinuance the allowance is made.

The COURT. If the service contemplated by the original contract is discontinued, then you allow him the month's extra pay, although the time for performing the service has not come?

The WITNESS. Provided the contract is executed.

The COURT. That is what I say.

The WITNESS. Yes, sir.

Mr. TOTTEN. Provided the contract is signed.

The COURT. I understand the witness to have answered the other branch already. [To the witness.] You make a distinction between the discontinuance of the service contemplated by the original contract and the discontinuance of the extra service which may or may not take place under that contract?

The WITNESS. Yes, sir.

Mr. WILSON. [To the witness.] That is all.

P. HENRY WOODWARD recalled and examined.

By Mr. BLISS :

Question. [Submitting papers to the witness.] I show you a file package of papers relating to route 44155, all of which were identified yesterday, and ask you if you recognize them?—Answer. [After examining the same.] These are the ones that I have had in my custody; yes, sir.

Q. Do you know where you got them?—A. I got them from the contract office of the Post-Office Department.

Q. Do you know when?—A. No, sir; I couldn't say exactly; I don't remember.

Q. About when?—A. Last summer or fall.

Q. Do you know how you got them; whether you got them personally or through a messenger?—A. I presume these came through a messenger, from the testimony of Mr. Sweeny, but I do not remember the route specifically.

Q. [Submitting a paper to the witness.] I do not know whether you had that jacket that Mr. Sweeny produced this morning or not.—A. [After examining the same.] I had the subcontract. I could not remember about the jacket.

Q. [Submitting another paper to the witness.] Now, as to the other paper identified by Mr. Sweeny this morning, 50 A, did you have that?—A. Yes sir.

Q. Do you know when you received that?—A. The oaths were taken out and deposited in the safe of the Second Assistant, and we took them about the time we went before the grand jury.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Did you get these papers yourself from the corresponding clerk?

—A. From the testimony of Mr. Sweeny, I should judge not. I do not remember what I took and what I did not take.

Q. Were you in Washington during that month?—A. I was away several times last September. Since you asked me the question the other day, I have investigated and found I was not here on the 7th.

Q. How long were you out of the city at that time?—A. I think I came back about the middle of the month. I know I was away the 7th, in Connecticut.

Q. Were you not absent about a month at that time?—A. No, sir; I think not. I know that I went to work on these papers, my general recollection is, about the 17th or 18th of September.

Q. Then there was at least the time from the 7th to the 17th or 18th that you did not know anything about them?—A. Yes, sir; I was out of the city. They were in our room.

Q. Who had them at that time?—A. They were in the care, I presume, of Mr. Finley.

Q. In the care of Mr. Finley, you *presume*?—A. Yes, sir; he was there.

Q. You do not *know* anything about where they were or who had access to them?—A. No, sir; I was out of the city at that time.

Q. Had you ever examined them before they came down to that room?—A. No, sir.

Q. Then the first you knew of them was after you found them in your room after you came back?—A. Yes, sir.

Q. They had been there some ten days then?—A. Yes, sir.

Q. And whether all the papers are here now that came down there, you could not say?—A. I could not say about that; no, sir.

Q. How many papers have come into your custody in your examination of this star-route business?—A. A good many. Do you mean to measure them by the bushel, or how?

Q. We will say by the bushel. How many bushels?—A. I presume there might be about a bushel and a half.

Q. You do not know anything about who had access to these papers while you were away?—A. There were very few came to our rooms because we had "No admittance" over the door, and it was not a place that was resorted to.

Q. You do not know how many newspaper men were in there at that time?—A. They did not come there much; the newspaper men I do not think ever examined these papers since they came into my hands. Of course I cannot answer for the time that I was not there, but only on general principles.

Mr. WILSON. That is all.

Mr. BLISS. I offer these papers in evidence, your honor. The first paper that I read is a paper indorsed:

4115. Ore.

JULY 17, 1878.

Postmaster at The Dalles transmits an agreement entered into with John Hailey, for temporary service.

Inside it bears the stamp July 15th, 1878, of the office of the First Assistant Postmaster-General, and recites that:

Whereas under advisement of D. M. Key, Postmaster-General of the United States, made and given on the 1st day of November, A. D. 1877—

Mr. TOTTEN. [Interposing.] We object to that, your honor, because it is too early in time, it being in 1878, long before anything happened about this—

The COURT. [Interposing.] I have stated before the reason why I allow these papers to go in.

Mr. BLISS. There is a special reason in this case, sir.

Mr. TOTTEN. I told you yesterday that I would take an exception, your honor.

Mr. BLISS. I propose by this and some other papers I am about to read to bring home to Mr. Brady the notice of the failure of the contractor to comply with his contract [continuing to read]:

Whereas under advertisement of D. M. Key, Postmaster-General of the United States, made and given on the first day of November, A. D. 1877, the contract to carry the United States mail on route 44155 was awarded to J. M. Peck, to carry said mail on said route from the first day of July, 1878, to the 30th day of June, A. D. 1882.

And whereas the said J. M. Peck has not called for or demanded of or from the postmaster at The Dalles, Wasco County, Oregon, the said mail of the United States, either in person or otherwise, but has wholly failed so to do, and deeming the regular transportation of the mails of the United States on the said route of great importance:

Now, therefore, I, Elizabeth M. Wilson, postmaster at The Dalles, Wasco County, Oregon, for and on behalf of the Government of the United States, subject to the approval of the Postmaster-General, and for and in consideration of the services of the party of the second part hereto, hereinafter mentioned, and by the said party of the second part to be performed, do by these presents promise, agree, and undertake to pay to John Hailey, of Boise City, Idaho Territory, for the carrying of the said United States mail on route 44155, for the quarter commencing on the 1st day of July, A. D. 1878, and ending on the 30th day of September, 1878, for the sum of three thousand eight hundred and seventy-five (\$3,875) dollars, the same being the rateable proportion of the sum of \$15,500, the yearly compensation for the transportation of said mail on said route.

And the said John Hailey, for and in consideration of the rateable proportion of \$15,500, to wit, \$3,875 doth by these presents agree, promise, and undertake to and with the Government of the United States to take, transport, and carry the mails of the United States on route 44155 from The Dalles to Baker City, in Oregon, to and including all the intermediate points mentioned in advertisement of November 1, 1877, from and to twice a week from the 1st day of July, 1878, to the 30th day of September, A. D. 1878.

Witness our hands this first day of July, A. D. 1878.

ELIZABETH M. WILSON,

Postmaster of The Dalles.

JOHN HAILEY,

Per H. J. WALDRON, *Agent.*

Witness:

AMANDA MILLAR,
JAMES K. KELLY.

[The paper just read was submitted to the clerk, and by him marked 1 D.]

Mr. TOTTEN. I observe in looking over the record yesterday that an exception I took does not appear in the printed book this morning. I desire to call the attention of the stenographer to the fact.

The COURT. You have your own stenographer.

Mr. TOTTEN. Yes, sir; I know it, and I have no doubt that he has the exception noted. I desire an exception noted to the reading of that contract, and to the letter which is about to be read.

The COURT. Note it.

Mr. BLISS. This next paper has the stamp of the Post-Office Department of August 7, 1878.

Mr. WILSON. What is the first paper you read marked?

Mr. BLISS. The first paper I read is marked 1 D. It is dated inside with the stamp:

THE DALLES, OREGON, *July 26th, 1878.*

I this day entered into contract for mail service from The Dalles to Baker City, Oregon, on route No. 44155, with John Hailey, of Boise City, Idaho, for the sum of \$14,000 per annum, subject to the approval of the Government.

E. M. WILSON, *P. M.*

The COURT. I thought it was \$15,000.

Mr. BLISS. The first one was \$15,000. This is \$14,000.

The next paper is indorsed:

August 8th, 1878.

44155. Or.

Commencement of service by contractor. Temporary service to July 24, 1878.

It bears inside the stamp of the inspection division of the Post-Office Department of date August 8th, 1878.

Certificate of mail service.

This is to certify that John Hailey, of Boise City, I. T., has carried the mails on route 44155, from The Dalles, Oregon, to Baker City, Oregon, from July 1st, 1878, to July 24th, inclusive, at the rate of fifteen thousand five hundred [\$15,500] dollars per annum, according to temporary contract.

ELIZABETH M. WILSON,
P. M., The Dalles, Or.

JULY 25, 1878, THE DALLES, Or.

The next paper is indorsed:

September 9th, 1878. Certificate of mail service. Route 44155. The Dalles to Baker City, Oregon.

Inside it bears the stamp of the contract office of September 9th, 1878, and reads as follows:

This is to certify that John Hailey, contractor for temporary service on route 44155, from The Dalles, Oregon, to Baker City, Oregon, has carried the mails on said route from July 25th to August 17th, 1878, according to the terms of temporary contract. Price, \$14,000 per annum.

E. M. WILSON,
P. M., The Dalles, Or.

AUGUST 26, 1878.

The next paper is a jacket indorsed as follows:

Date September 27th, 1878. State, Oregon.

No. of route, 44155.

Termini of route, the Dalles and Baker City.

Length of route, 275 miles.

Number of trips, two.

Contractor, John M. Peck.

Pay, \$2,250 per annum.

Service not having been commenced on this route July 1st, 1878, postmaster at The Dalles authorized to employ temporary service.

All that is in red ink. In black ink is the following:

Suspend pay.

French.

[The papers up to this point were submitted to the clerk, and were by him marked from No. 2 D to No. 5 D, inclusive, respectively.]

The next paper is a jacket, the indorsement on which is as follows:

Date, October 29th, 1878. State, Oregon.

Number of route, 44155.

Termini of route, the Dalles and Baker City.

Length of route, 275 miles.

Number of trips per week, two.

Contractor, John M. Peck.

Pay, \$8,288 per annum.
For memorandum see in.

That is red ink. Then in black :

First. Increase service one trip per week, from November 15th, 1878, and allow contractor \$4,144 per annum additional pay, being pro rata.

Second. Reduce schedule time from 120 hours to 72 hours from November 15th and allow contractor \$18,648 per annum, additional pay, being less than pro rata in accordance with his written agreement.

BR/

Order number, 9615.
Date, October 29th, 1878.

[The paper just read was submitted to the clerk to be marked was by him marked 6 D.]

The next paper is a jacket indorsed as follows :

Date, October, 1878. State, Oregon.

Number of route, 44155.

Termini of route, The Dalles and Baker City.

Length of route, 275 miles.

Number of trips per week, two.

Contractor, John M. Peck.

Pay, \$8,288 per annum.

Citizens of Oregon supplied with mail by this route.

Petition for four repeated additional weekly trips and expedition of schedule

Hon. John H. Mitchell indorses the petition and states, "The prayer of petition should be granted. This service should be increased without delay. I can recommend it for reasons stated in the petition."

There are 13 intermediate offices supplied by this route, from which the annu-
enue amounts to \$1,123. The revenue from Canyon City is \$650 a year. Cost
four additional weekly trips, \$16,576 per annum. Cost of one additional trip, \$
year. Contractor submits proposition to reduce running time from 120 hours
hours for

	\$18,648 per annum, being less than pro
Increase.....	4,144

Total.....	\$22,792
------------	----------

That is all in red ink. Then there is in black ink.

Second. Reduce schedule time from 120 hours to 72 hours, and allow contractor \$18,648 per annum additional pay, being pro rata, from November 15th, 1878.

First. Increase service one trip per week, and allow contractor \$4,144 per annum additional pay, being pro rata, and from November 15th, 1878.

Both of those are in black ink and erased with red ink drawn across them. In the black ink is also written in blue pencil "Do not Brady."

[The foregoing paper was submitted to the clerk to be marked was by him marked 7 D.]

In that jacket is the following paper :

To the Hon. D. M. KEY,

Postmaster-General of the United States :

The undersigned citizens of Wasco and Grant Counties, in the State of Oregon, residing in the vicinity of postal route No. 44155, respectfully petition that the mail service on said route be increased to a daily service, in expeditious time—

Then interlined are the words:

Of 72 hours.

Above the line. And it proceeds :

For the following reasons, to wit:

That the country along said route is rapidly filling up, and the population constantly increasing.

That the country along said route has no telegraphic or other communication with other portions of our Union, except by mail; and in order to protect ourselves from hostile Indians, it will be necessary to have more frequent communications with other parts of the country.

And there are signed to it, I should think, fifty or sixty names of people residing along there.

[The foregoing paper was submitted to the clerk to be marked; was by him marked 8 D, and then was submitted to the jury for inspection.]

Mr. HENKLE. It is understood, your honor, that we are excepting to this evidence?

The COURT. Oh, yes.

Mr. HENKLE. To all these papers.

Mr. BLISS. It is a mere question of interlineation to which I desire the attention of the jury.

Mr. TOTTEN. Have you another altered paper there?

Mr. BLISS. The interlineation is, "of seventy-two hours."

Mr. TOTTEN. I guess we had better look at that paper first.

Mr. BLISS. You had them all submitted to you before they were put in evidence.

Mr. TOTTEN. We did.

Mr. BLISS. Yes, sir; you had them all submitted to you yesterday. There is also in the same jacket the following:

To the Honorable, POSTMASTER-GENERAL,
Washington, D. C. :

We, the undersigned petitioners, do most respectfully ask that the mail service on route No. from The Dalles to Baker City may be increased to 6 trips per week, and the running time expedited to 72 hours. This is a very important road to the people of Eastern Oregon, as it connects us with other counties and towns. It is also the most direct route to The Dalles and Columbia River, and the counties through which it passes is fast settling up with stock men, farmers, and others. The last summer's Indian war has proved to us that a daily mail on this route would not only be a great benefit to the country at large, but would also be of great benefit to the Government.

Date, Baker City, Oregon, September 25, 1878.

There are about a hundred names signed to that petition.

Mr. WILSON. Where is the interlineation in this one?

Mr. BLISS. I have said nothing about interlineation.

[The paper just read was submitted to the clerk to be marked and was by him marked 9 D.]

Mr. BLISS. In the same jacket is the following:

To the Hon. POSTMASTER-GENERAL, U. S. A.,
Washington, D. C. :

We, the citizens of The Dalles and Wasco County, State of Oregon, most respectfully petition and ask that the mail service on route [No. 44155] from The Dalles to Baker City, State of Oregon, be increased to 6 times a week, and the running time on said route be expedited to seventy-two [72] hours. The above named route is a very important route to the people of the State of Oregon, and the country through which it runs is rapidly filling up, and we the undersigned are satisfied that our request will not only be beneficial to this country but also profitable to the United States, for the experience of the last Indian war has proven the same, as no communication could be had except by private carriers under heavy expenses. We therefore pray for the granting of the above petition.

[The paper just read by counsel was submitted to the clerk to be marked, and was by him marked 10 D, and submitted to Mr. Wilson.]

Mr. WILSON. Have you any objection to my showing this one to the jury, Colonel Bliss?

Mr. BLISS. Of course not. They can all go to the jury.

Mr. WILSON. I simply want the jury to notice that the seventy-two hours is not interlined in this one.

Then comes the indorsement in red ink.

October 23rd, 1878.

41155. Oregon.

Petition for additional weekly trips and a reduction of running time to 72 ho

Mr. WILSON. You have no objection to my showing this to the
Mr. BLISS. Certainly not. It is your right. There is no prete
any interlineation in any other petitions.

Mr. WILSON. Then, why make all that display ?

Mr. BLISS. That petition is from Baker City. They never a
pound of mail from Baker City over the entire route.

Mr. TOTTEN. Who told you that ?

Mr. BLISS. Mr. Wilson asked me why I made all this display, i
reply to that I stated a fact.

Mr. TOTTEN. Were you ever there ?

Mr. WILSON. Let us swear Mr. Bliss.

Mr. MERRICK. If you ask a question you must expect an answ

Mr. BLISS. In the same jacket there are two papers containin
ures in pencil. If desired I will read them.

Mr. TOTTEN. We have no objection to the jury seeing those fi

Mr. BLISS. I do not think they will carry any information t
jury.

[The papers referred to by Mr. Bliss were submitted to the ju
inspection.]

Mr. BLISS. In the same jacket is the following :

WASHINGTON, D. C., October 21,

Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General :

SIR: I hereby offer to carry the mails on route 44155, from The Dalles to Bake
three times per week, on a reduced schedule of seventy-two hours, for an add
compensation for increased speed of eighteen thousand six hundred and forty
dollars per annum.

Respectfully,

JOHN M. PE
M.

[The paper just read was submitted to the clerk to be marked
was by him marked 11 D.]

Mr. BLISS. These pencil memoranda were not marked. I think
had better be marked.

[The pencil memoranda referred to were submitted to the clerk
by him marked, respectively, 12 D and 13 D.]

Mr. BLISS. The next paper is as follows :

CHICO SPRINGS, NEW MEXICO.
September 18th, 1878.

Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General :

The number of men and animals necessary to carry the mail on route 44155, from The Dalles to Baker City, is eight men and ten animals, and the number necessary to carry the mail on said route with a schedule of 72 hours will be twenty-six men and sixty-six animals.

JOHN M. PECK.

TERRITORY OF NEW MEXICO,
County of Colfax, ss :

On this 18th day of September, 1878, personally appeared before me John M. Peck, to me well known to be the person who signed the above statement, and made oath that said statement is true as he verily believes.

J. S. TAYLOR,
Notary Public.

Mr. HENKLE. May I ask you the number of men and animals mentioned there ?

Mr. BLISS. The number used on the schedule time is eight men and ten animals, and the number necessary to carry the mail on a schedule of ten hours will be twenty-six men and sixty-six animals. [Submitting paper to the court.] This paper is already marked 50 A.

Mr. MERRICK. Let the clerk mark it again without striking out the other mark.

Mr. TOTTEN. What is that paper ?

Mr. BLISS. It is the oath.

[This paper was submitted to the clerk to be marked, and was by him marked 14 D, the same paper having been previously marked by the clerk 50 A.]

Mr. BLISS. The next is a jacket as follows :

Date, January 17th, 1879. State, Oregon.

No. of route, 44155.

Termini of route, The Dalles and Baker City.

Length of route, 275 miles.

No. of trips per week, three.

Contractor, John M. Peck.

Pay, \$31,080 per annum.

Order of October 29th, 1878, did not increase pay of subcontractor.

All that is in red ink. Then in black ink :

Amend order of October 29, 1878 (number 9615), so as to increase pay of subcontractor in like amount.

BRADY.

Order number 516; date, January 17, 1879.

[The paper just read was submitted to the clerk to be marked, and was by him marked 15 D.]

Mr. BLISS. The next paper is as follows :

November 11th, 1878.

4415. Or.

Relative to employment of temporary service.

The inside of the paper is as follows :

POST-OFFICE, BAKER CITY, OR., August 24th, 1879.

SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C. :

SIR: I forwarded register August 1st, for service on route number 44153. As the new contractor on route 44155 did not put in an appearance. Mr. C. M. Kellogg, the old

No. 14336—51

contractor from Baker City to Canyon City has been carrying the mail since July 1st, according to the old schedule. Have heard nothing of the new contractor and did not know what else to do.

Respectfully,

GEORGE H. TRACY, *Postmaster.*

[The paper just read was submitted to the clerk to be marked, and was by him marked 16 D.]

Mr. BLISS. The next paper is a jacket, and is as follows:

Date, November 12th, 1878. State, Oregon.
 Number of route, 44155.
 Termini of route, The Dalles and Baker City.
 Length of route, 275 miles.
 Number of trips per week, three.
 Contractor, John M. Peck.
 Pay per annum, \$31,080.
 September 27th, 1878, pay suspended.

All that is in red ink. In black ink:

Modify order of September 27th, 1878, [number 8402,] so as to take effect October 1st, 1878.

FRENCH.

Special.

FRENCH.

[The paper just read was submitted to the clerk to be marked, and was by him marked 17 D.]

The next paper is a jacket, and is as follows:

Date, November 19, 1878. State, Oregon.
 Number of route, 44155.
 Termini of route, The Dalles and Baker City.
 Length of route, 275 miles.
 Number of trips per week, three.
 Contractor, John M. Peck.
 Pay, \$31,080 per annum.
 Contractor presents receipt for temporary service. See in.

All that is in red ink. Then in black:

Remove suspension of pay.

FRENCH.

Special.

FRENCH.

The word "special" is in red ink, and the word "French" in black. Inside of that is a receipt indorsed on the outside:

November 19, 1878.
 44155. Or.
 Receipt for temporary service.

The receipt reads as follows:

1,788.04.
 Received, Washington, D. C., November 18th, 1878, of John M. Peck, one thousand seven hundred and eighty-eight $1\frac{2}{3}$ dollars in full payment for temporary service on route No. 44155, from The Dalles to Baker City, from July 1st, 1878, to August 16th, 1878, inclusive.
 \$1,788.04.
 913.04. Paid previously.
 \$875.

JOHN HAILEY,
 By M. SALISBURY.

[The two papers just read were submitted to the clerk to be marked, and were by him marked, respectively, 18 B and 19 B.]

Mr. WILSON. Do you dispute that the contractor paid for this temporary service?

Mr. BLISS. I presume he did. I do not know anything about it, however.

Mr. HENKLE. The suspension of pay was removed in that paper?

Mr. BLISS. I read it so. The next is a jacket:

Date June 27th, 1879. State, Oregon.

Number of route 44155.

Termini of route, The Dalles to Baker City.

Length of route, 275 miles.

Number of trips per week, three.

Contractor, John M. Peck.

Pay, \$31,080 per annum.

Citizens receiving mail from this route petition for increase of service to seven trips per week.

Hon. John H. Slater, U. S. S., and Hon. John Whiteaker, M. C., indorse the petition and state: "We hereby recommend the granting of the prayer of the within petition."

Petition inclosed signed by eight members of the legislature of the State of Oregon, joining in the request for daily service. There are fourteen intermediate offices on the route that would be benefited by the increase of service recommended. Canyon City is an intermediate office. Revenue \$606.08 per annum. It is represented that the country through which this route passes is a mining and farming country, and is rapidly settling up.

Hon. John H. Mitchell also recommends daily service.

Cost of four additional weekly trips, \$41,440 per annum.

Increase service from four trips per week from July 14th, 1879, and allow contractor \$41,440 per annum additional pay, being pro rata.

BRADY.

Inclosed in this is a petition, which is as follows:

Hon. D. M. KEY,

Postmaster-General:

We, the undersigned, citizens of Eastern Oregon, and residents in that portion of the State supplied by mails by route No. 44155, from The Dalles to Baker City, do most earnestly petition and pray that the service on said mail route from The Dalles to Baker City may be made daily service.

This route is of very great importance to the people of Eastern Oregon, and the region through which it passes is a very rich country, which is receiving a very increase of population by immigration from the older States. This route should be made a daily route, and we do most earnestly petition and pray that the necessary steps to have daily service be taken at once.

Respectfully submitted.

That is signed by six pages of petitioners.

[The two papers just read were submitted to the clerk to be marked, and were by him marked, respectively, 20 D and 21 D.]

Also in the same jacket there is another petition, which is as follows:

To the Hon. POSTMASTER-GENERAL,

Washington, D. C.:

SIR: We, the people of Eastern Oregon, are very anxious to have more mail facilities than we now have. We therefore ask that mail route No. 44155, from The Dalles to Baker City may be made a daily mail. We deem it a necessity, for the reason that this country is a mining country as well as a farming and stock country, and during the last summer's Indian trouble proved to us that a daily mail would not only perhaps save the lives of many people, but would aid the Government in suppressing those outbreaks which are liable to occur at any time.

We therefore most respectfully and earnestly ask that a daily mail may be established on said route.

That is signed by probably a hundred and twenty in all, the names being numbered up to number 102.

Mr. WILSON. I observe that there are quite a number of officers of the Army signing for this route.

Mr. BLISS. You can hand it to the jury if you desire.

Mr. MERRICK. A gentle suggestion, Mr. Wilson.

Mr. WILSON. Yes; I want the jury to look at this.

Wherefore we ask that daily mail service be established upon said mail route 44155, and your petitioners, as in duty bound, will ever pray, &c., &c.

That is signed by about two pages of petitioners.

[The paper just read was submitted to the clerk to be marked was by him marked 23 D.]

The COURT. What fault have you to find with that?

Mr. BLISS. To these particular petitions?

The COURT. Yes.

Mr. BLISS. I do not know that we have any fault to find.

The COURT. What is the use of reading them?

Mr. BLISS. There is one thing to be said. I hand them to the clerk and I want them to see the handwriting [submitting same].

The COURT. The other side has not required your reading of them.

Mr. BLISS. But the other side has, your honor. They would accuse me of suppressing papers, and therefore I read them. As to the petitioners, and as to the genuineness of these petitions, there is no objection raised other than that interlineation of "seventy-two hours" in the one case.

Mr. HENKLE. They are charged in the indictment to be false, fraudulent and altered.

Mr. BLISS. It is in this jacket asking for seven trips that we claim it is false and fraudulent.

Mr. INGERSOLL. In the indictment they are all charged as false and fraudulent. I suppose they were all produced to show the faithfulness of the indictment.

The COURT. I supposed so at first; but as the case went on I was unable to see it.

Mr. WILSON. That is what we are not able to see. If your honor please, they introduce the order made by General Brady increasing and expediting that service, and in connection with that we want to read to the jury the letters, petitions, and so forth, upon which he produced that order.

The COURT. This is to accommodate you, then?

Mr. WILSON. It is part and parcel of that order, your honor, because

To the Hon. the POSTMASTER-GENERAL OF THE UNITED STATES :
Washington, District of Columbia :

SIR : The residents of this part of Grant County, State of Oregon, who have their mail facilities at this, the above mentioned place, and which vicinity for the last few years has been fast filling up with a permanent population, and are anxious, and owing to the business and population as compared with other places are entitled to a daily mail each way on route No. 44155 (between Baker City and The Dalles via Canyon City and this place), which will also facilitate communication with the military post of Camp Harney, which is a permanent military point in East Oregon (in fact the only one), owing to the recent and expected Indian troubles, to say nothing of numerous small mining camps in this vicinity.

Therefore we, the undersigned, humbly pray that you will take this petition into your earliest consideration, and grant the prayer of the undersigned petitioners.

That is signed by 87 signers.

[The paper just read was submitted to the clerk to be marked, and was by him marked 24 D.]

The COURT. Brady made the order to carry out the prayers of these petitioners, I suppose ?

Mr. BLISS. Yes, sir ; I do not think these essential to the case, but I read them simply because they wanted them read.

Mr. INGERSOLL. Now, it is charged, if the court please, on this very route 44155, and that is what they are proving——

Mr. MERRICK. [Interposing.] Is there any question raised before the Court.

Mr. INGERSOLL. Yes.

The COURT. I want some information. I want to see the bearing of this evidence.

Mr. INGERSOLL. Here is the charge ; that

The said John M. Peck, John R. Miner, Harvey M. Vaile, and Montfort C. Rerdell did fraudulently make, write, sign, and cause and procure to be made, written, and signed, and did fraudulently send, transmit, deliver, and cause and procure to be filed in the said office of the Second Assistant Postmaster-General, among the papers relating and pertaining to the said post route numbered 44155, a large number of false and fraudulent petitions, applications, and papers purporting to be the petitions and applications of persons residing upon and in the neighborhood of the said post routes to the said Postmaster-General for an increased and additional service in carrying and transporting the said mails on and over the said post route, the said petitions, applications, and papers then and there being fraudulently signed with a large number of fictitious names, and the names of persons not residing upon and in the neighborhood of the said post route.

There is the charge.

The COURT. I suppose they will prove the petitions to be fictitious after a while.

Mr. WILSON. [To Mr. Bliss.] If you have no objection I would like to have you read the indorsement on the back of this petition.

Mr. BLISS. Which one ?

Mr. WILSON. This last one.

Mr. BLISS. [Reading.]

We [I] hereby recommend the granting of the prayer of the within petition.

JAMES H. SLATER.
JOHN WHITEAKER.

Mr. WILSON. Mr. Slater is Senator.

Mr. INGERSOLL. I object to their introducing any more petitions on this route except fictitious ones.

The COURT. You do not want to have them presented.

Mr. INGERSOLL. No ; no more genuine ones on this route, because the genuine ones do not tend to establish the charge of the indictment.

The COURT. I understand that these papers are read now because you require it.

Mr. MERRICK. Certainly.

The COURT. I do not see the bearing of some of this evidence. It may be developed hereafter.

Mr. BLISS. We expect to make it appear; but as to these petitions in this jacket, we do not care to read them unless the court or the other side require it.

Mr. INGERSOLL. I withdraw my objection. I want all papers read, because it is just as well to have our side of the case proved as we go along.

Mr. MERRICK. If we do not read them you complain, and if we do read them you complain. Nothing will please you.

Mr. BLISS. It is the old ecclesiastical position.

The COURT. The court decided yesterday that these papers of the department relating to these routes were not court records, and that it was not therefore necessary for the prosecution to produce the exemplification of the originals and read them all; but that the prosecution might read such as it pleased, leaving to the other side any papers in those files which might tend to make out the defense.

Mr. HENKLE. Those papers specifically charged in the indictment should be read.

The COURT. If they do not read them, they do not make out that part of the indictment; that is all.

Mr. MERRICK. I think the best plan is the plan I stated that we proposed to adopt; and that is to put in every paper that appears to relate to the order passed by Mr. Brady, which forms the subject of the attack, whether the paper is for us or against us.

SEVERAL OF COUNSEL FOR DEFENSE. That is right.

The COURT. It depends a good deal upon what kind of order Brady made. If the order merely showed that it was an order granting the prayer of the petitioners, and the petitions were all genuine——

Mr. MERRICK. [Interposing.] The petition asks for certain expedition. He is to pay a specified price for that expedition.

The COURT. I suppose probably the fraud comes in under the order.

Mr. MERRICK. Yes.

Mr. BLISS. As to some of these petitions, I might say that we expect to show that the petitions themselves are in the handwriting of some of these defendants—not the signatures, but the petitions themselves, as having some bearing upon some of the allegations.

The COURT. That is very common.

Mr. BLISS. Undoubtedly.

The COURT. But it may have some bearing.

Mr. BLISS. We intend, unless your honor overrules us, to pursue the course Mr. Merrick has suggested.

Mr. INGERSOLL. Your plan is like proving a man guilty of forgery by showing that he wrote the body of a note, and not the signature.

Mr. BLISS. [Reading:]

THE DALLES, OREGON, Dec. 19, 1872.

To the Hon. POSTMASTER-GENERAL,
Washington, D. C. :

SIR: We, the undersigned citizens, would most respectfully ask that the mail service on route 44155, from The Dalles to Baker City, State of Oregon, may be increased to a daily mail. Over this route the people of Eastern Oregon get their mails, and the country through which it passes is fast settling up. It also passes through the mining country of Eastern Oregon, where a daily mail is of great necessity. We are also on the border of Indian reservations, and we believe that in time of Indian troubles a

daily mail will not only help to protect the settlers, but will largely aid the military in putting down Indian outbreaks. We, therefore, most earnestly ask for said increase.

[The paper last read was marked by the clerk 25 D.]

Mr. HENKLE. There is one petition signed by a member of the legislature.

Mr. BLISS. I presume this is it.

The COURT. A member of a legislature never signs anything but what is honest.

Mr. MERRICK. And always reads it beforehand.

Mr. BLISS. [Reading:]

Hon. D. M. KEY,

Postmaster-General of the United States :

We, the undersigned representatives, residing in the counties through which mail route number 44155 from The Dalles to Baker City, Oregon, passes, would respectfully recommend that the service be increased on said route to a daily service. The recent Indian raids through that section and the large immigration during the past year render this increase absolutely necessary. We also ask that the schedule of time may be reduced to 72 hours.

This petition is signed by four persons who are described as representatives, and four described as senators.

[The paper last read was marked by the clerk 26 D.]

The COURT. The allowance was made, the expedition was granted, the additional service was put on, and these petitions are not impeached. I understand you propose to assail the order on the ground of the extravagance of the allowance.

Mr. BLISS. We propose among other things to show that while this order was made for this increase, and the account was drawn for it that the service was not performed in accordance with the order by some of these defendants. We propose, also, to show that the oath as to the number of animals used by them before and after the order was made, was untrue. As to the petitions in this particular jacket, I do not recall that we attack any of them.

The COURT. I would say, as the Romans do, it is in the interest of the Republic that as much time be saved in this case as possible.

Mr. BLISS. I should be very glad to save time, but do not want to have it said that we have withheld anything.

The COURT. We have had a great many of these petitions read. They are generally of the same purport, and their genuineness seems not to be questioned.

Mr. BLISS. Hereafter we will offer them without reading them unless required by your honor or the other side.

The COURT. Unless you want to assail them.

Mr. HENKLE. We think that in the interest of justice it is necessary or proper at all events that these papers should be read.

Mr. MERRICK. We will offer them.

Mr. BLISS. Those you request to have read I will read.

Mr. HENKLE. We request that they all be read.

The COURT. The court has something to say to that. I am not going to stay here six months to have a case tried in a way not known in practice.

Mr. BLISS. This last petition was indorsed as follows :

I earnestly recommend this service to be increased to daily.

November 12, 1876.

JOHN H. MITCHELL.

The COURT. The court will presume and everybody will presume an order made by a functionary of the Government in the course of duties was proper until it was shown to be otherwise.

Mr. HENKLE. The charge in the indictment is that it was made upon false papers.

The COURT. If they do not make out the charge you will not be harmed.

Mr. WILSON. I feel a little solicitude about this—

Mr. BLISS. [Interposing.] They are all in now.

Mr. WILSON. [Continuing.] General Brady has been assailed about these orders. I want it to appear to the jury as we go along exactly upon what it was that he made these orders. These petitions come here to Senators and Members, and they go to the Postmaster-General and go to the Second Assistant, and they insist upon these things being done; and the officer makes these orders upon the recommendation made by the people along the line, and the Senators and Representatives. I think it is only fair to him, and I think it conduces to justice in this case, that the jury shall know when they read an order that he makes, upon what he made that order. I think it is only fair and just to him. Now, here we have in this case an illustration: They read upon a jacket an indorsement showing a large increase of the pay on this route, a large increase of service and expedition of service. Now, we find right in this case that hundreds of people living along the line of the route, including the officers in the Army, and so on, have urged and persistently urged that very thing upon the department.

Mr. HENKLE. Senators and Members.

Mr. WILSON. It seems to me that it is but just that we should have these papers and petitions read.

The COURT. He had authority to make those orders. The court is not going to presume that he made them corruptly. The other side must show that.

Mr. MERRICK. Certainly.

Mr. WILSON. Yes; but they undertake to show that to your honor by simply showing that here was a route on which the pay was so much for transporting the mail once a week, and then they show that the service was increased to three times a week, and the price went up, and then increased to seven times a week, when the price again went up; and the idea is to impress the minds of the jury with the belief that there is something wrong and extravagant about this thing, and that it was an arbitrary and a wanton act.

The COURT. The petitions say nothing about the cost; that is not the business of the petitioners. They want the service. It is not necessary to go to the petitions to ascertain whether the officer in allowing expedition or increasing the service violated his duty. The petitions throw no light on that subject. It is not necessary it seems to me, to sit here hours and days hearing read genuine petitions which throw no light at all upon the corrupt act, or the alleged corrupt act of the officers. If the official orders a certain expedition upon the route and makes an unlawful allowance for the expedition, that appears upon the face of the order. It is not necessary to read the petition to prove it. The petition throws no light upon that subject. So with regard to the increase of service. If it is increased from one trip in a week to seven in a week, and he manifestly by his order allowed to the contractor or the subcontractor more than they are entitled to, he may be responsible for that; but the petitions throw no light upon that subject.

WILSON. I beg the indulgence of your honor for just a moment, point. They say in the indictments :

Afterwards, to wit, on the said twenty-seventh day of June, in the year of our thousand eight hundred and seventy-nine, at the county and District aforesaid within the jurisdiction of the said court, the said Thomas J. Brady did not lawfully make, sign, and file in the said office of the Second Assistant Postmaster a certain order in writing for increased and additional service for carrying the mail on and over the said post-route number 41155, and for the allowance of in-pay and compensation to the said John M. Peck, as such contractor as aforesaid for the benefit, gain, and profit of the said John W. Dorsey—

the rest of the defendants, naming them—

for increased service then and there not being lawfully needed and required, and the said Thomas J. Brady, then and there well knew as aforesaid.

COURT. That is one charge.

WILSON. Now, I say we have a right to show here, by the petition of these parties who made this appeal to him, that that service was needed and required.

COURT. You are not giving your evidence now.

WILSON. I know; but I think we have a right to have it go in now.

COURT. It might be your right to put it in, and it might be important for the defense when you come to your turn to produce all the petitions; but in the development of the prosecution it might be of unimportant.

HENKLE. But they are offering this evidence to prove their case, and simply want it read.

COURT. They say they do not impeach the genuineness of these petitions at all. Then, why read them?

HENKLE. Then they had better abandon the charge entirely.

MERRICK. Not at all.

HENKLE. It is not charged in the indictment that the amount of the bill was incorrect, but that he acted upon an improper basis.

INGERSOLL. Exactly; that these petitions were fraudulent.

HENKLE. It does not charge that these allowances were not such as were proper for him to make for this increase and expedition. The allowances are regulated by well settled rules of calculation in the Department.

MERRICK. Oh, no.

BLISS. Our position is distinctly this: That Mr. Brady, with the knowledge in his office that existed as to the nature of this route, the amount of mail matter going over it, and the service on it, had no right as a prudent officer to accept these petitions as final and conclusive, and as taking away his judgment which he was bound to exercise, whether, having regard to productiveness and other circumstances, this order should be made. We do not attack the genuineness of the petitions in this particular jacket, nor do we claim that he had no right to take them into consideration. We expect to show, before we adduce all our evidence, other facts which will raise a doubt as to the propriety of Mr. Brady's action in making this order; but it is not based upon the genuineness of the petitions at all. Therefore for our purposes we do not care to dispute the genuineness of the petitions. But they are all in. There are no further petitions to be introduced on this route at all, and therefore we are discussing a dead issue.

COURT. We will hold that *irrevocable verbum* (?) and let it go.

COTTEN. I am glad, your honor, that Mr. Bliss has told us what his position is.

MERRICK. What is before the court?

Mr. TOTTEN. I propose to ask the court for my information——

Mr. MERRICK. [Interposing.] I object.

Mr. TOTTEN. I ask the court whether I shall not be heard ?

The COURT. It was the court that interrupted the proceedings.

Mr. TOTTEN. I do not object to that ; but it was brother Merrick interrupted me.

Mr. MERRICK. I rose and asked what was before the court in order that I might know how to perform my duty in replying upon the question before the court to the speech that the counsel was about to make.

Mr. TOTTEN. The court is not here to instruct brother Merrick on the subject.

Mr. MERRICK. The court is here to know what is before it.

The COURT. The court can bring anything before it it chooses, I imagine.

Mr. MERRICK. Yes ; and I only wanted to know what it was, that I might have an opportunity to answer it.

The COURT. These suggestions occurred to me, and I made them merely for the purpose of saving time ; but inasmuch as all the petitions have been read, and there is nothing to be gained now by urging this question, I withdraw what I proposed to say, and what I have said in regard to it, and let the evidence go without any further comment on either side.

Mr. INGERSOLL. Good.

Mr. TOTTEN. I only wanted to invite your honor's attention to the declarations of Mr. Bliss that the Government stood upon the question——

Mr. MERRICK. [Interposing.] Has the counsel a right without interposing objection——

The COURT. [Interposing.] You have no right to take the floor from Mr. Totten.

Mr. MERRICK. Unless there is something to be said.

Mr. TOTTEN. I suggest, your honor, that this is a little bit impudent on the part of Mr. Merrick.

Mr. MERRICK. Pardon me. I think it is unprofessional on your part.

Mr. TOTTEN. You are unprofessional in this matter.

The COURT. The gentlemen are not the judges as to what is professional.

Mr. MERRICK. I think sometimes they have to be.

The COURT. I suppose that what would seem professional to you would seem quite unprofessional on the other side.

Mr. MERRICK. It ought not to.

The COURT. I shall have to determine that matter, and inasmuch as the whole subject is laid aside now, Mr. Totten, it seems to me that there is nothing further to be said at this time on that subject.

Mr. TOTTEN. I was not going to say anything, your honor——

The COURT. [Interposing.] Then don't say it.

Mr. TOTTEN. [Continuing.] About the testimony.

Mr. BLISS. The next is a jacket :

Date, April 17, 1880. State, Oregon.

No. of route, 44155.

Termini of route, The Dalles and Baker City.

Length of route, 275 miles.

No. of trips per week, 7. Contractor, John M. Peck.

The Postmaster-General directs that the service on this route be reduced one trip per week.

May 1st, 1880. Reduce service one trip per week, decreasing contractor and sub-

pay \$10,360 per annum, being pro rata, allowing contractor and subcontractor's extra pay on service dispensed with.

FRENCH.

Number 3438. Date, April 17th, 1880.

per last read was marked by the clerk 27 D.]

16, 1880. Oregon.

to 44155.

route, The Dalles and Baker City.

route, 275 miles.

6 per week, 6.

John M. Peck.

\$10 per annum.

contractor, H. M. Vaile. Pay, \$621.60 per annum.

On the 29th of October 29, 1878, the service on this route was increased to 7 trips per week to enable the department to place in operation temporary service and to make an expenditure within the appropriation for the fiscal year ending June 30, 1879. Service on this route was, under date of April 17, 1880, reduced to 6 trips per week. See petitions and recommendations on file asking for daily service.

On the 1st of July, 1880, increase service to 7 trips per week, and allow contractor \$10,360 per annum, being pro rata.

BRADY.

per last read was marked by the clerk 28 D.]

Number 1, 1878. State, Oregon.

to 44155. Termini of route, The Dalles and Baker City.

route, 275 miles. No. of trips per week, 2.

John M. Peck.

\$8,288 per annum.

Auditor of the Treasury for the Post-Office Department that the subcontractor, H. M. Vaile, whose post-office address is Independence, Missouri, for service on route 44155, at \$8,288 per annum, from July 1st, 1878, to June 30, 1882, has been filed in

BRADY.

per last read was marked by the clerk 29 D.]

in that jacket, as it is now, but not as was produced yesterday in consequence of Mr. Sweeney's explanation this morning, is a contract of Vaile's:

5, from The Dalles to Baker City.

with the subcontractor until June 30, 1882.

John M. Peck has been accepted according to law as the contractor for the mails on route 44155, from The Dalles to Baker City, in the State of Oregon, twice a week, from July 1, 1878, to June 30, 1882, by the United States Department, in which contract are the stipulations and agreements as

they are set out:

Indenture witnesseth: That on this 1st day of July, 1878, John M. Peck, of the first part, and H. M. Vaile, party of the second part, have agreed as follows: That H. M. Vaile and his sureties, party of the second part, do jointly and severally covenant and agree to transport the United States mails on route 44155, from The Dalles to Baker City, twice a week and back, from the 1st of July, 1878, to the 30th of June, 1882, inclusive, in accordance with the advertised schedule of time.

The contract specifies two round trips per week at \$8,288 per annum. It contains a provision for payment pro rata in case of an increase or decrease of service, and it recognized the authority of the department to extend, suspend or curtail the service.

The contractor is to be subject to all fines and deductions, and is to be subject to the orders of such employés of J. R. Miner, such newspaper men, and such agents and railroad officials as they shall deem it expedient to send on the passage to.

The contract binds the first part covenants and binds himself to pay for

each quarter of services within thirty days after the certificates of the postmaster at the terminal and schedule points are forwarded to and received by the inspection division of the Post-Office Department and J. R. Miner, and the collection orders are all to be returned or accounted for to John R. Miner.

It is further mutually agreed that in case the service is expedited, the party of the first part shall pay to the party of the second part 100 per cent. of the amount received therefor.

The COURT. What is the meaning of that? Is that the whole sum?

Mr. BLISS. They are to have the whole of the expedition.

Mr. WILSON. The subcontractor takes the entire pay.

Mr. BLISS. Yes.

The subcontractor agrees to use his utmost energy in seeing that the reports of the service are promptly forwarded by the postmasters at the schedule points to the department, and also that duplicate copies are forwarded to J. R. Miner. The contract is signed by John M. Peck, United States Government contractor, by John R. Miner; and also by H. M. Vaile, subcontractor.

[The paper last read was marked by the clerk 30 D.]

In the same jacket are some papers I do not think have any pertinency, and which I do not desire to read unless the gentlemen wish it. They are papers submitting this contract to the Assistant Attorney-General for the Post-Office Department for his opinion on the claim for a month's extra pay under the contract. I will read them if they desire it.

The COURT. You are not obliged to read them.

Mr. WILSON. Do you want them marked?

Mr. BLISS. No; I do not think they play any part in the case at all. The next is a paper dated May 10, 1881. [Submitting the same to counsel for defense.]

Mr. WILSON. I object to this paper, because it bears date after General Brady ceased to be Second Assistant Postmaster-General.

Mr. BLISS. That is undoubtedly a fact, your honor. It is the report of a post-office inspector making recommendations in connection with the service; and I propose, if admitted, to follow it by another report of the same gentleman, and then by the action of the Post-Office Department in reducing the service; all of which took place after Mr. Brady went out of office.

Mr. INGERSOLL. I object to the report of any inspector after that date.

The COURT. I think the court has already ruled on that subject.

Mr. BLISS. Your honor ruled, as I recollect it, that it was not admissible.

The COURT. The ground upon which these papers are admitted is that they are General Brady's papers, just as a book would be his book, subject to his examination, and he is presumed to know all about them. They are, therefore, evidence against him. But that presumption does not arise in regard to papers that have been put into the case after he left the office.

Mr. BLISS. We do not urge it at all. I believe that is all the record that I desire to put in on this route; and I may be permitted to say that, in obedience to your honor's suggestion of yesterday, all of the record which I do not intend to offer was this morning restored to the files of the Post-Office Department, where the gentlemen can have such access to it as they desire. I will to-night restore also these papers that have been ruled out.

he COURT. You are now at the end of this route?

r. BLISS. I am at the end of this route.

he COURT. Have you any witnesses?

r. BLISS. Yes, sir.

he COURT. In regard to this route?

r. BLISS. Yes; six or eight of them.

he COURT. Then we cannot finish before recess?

r. BLISS. No.

At this point (12 o'clock and 30 minutes p. m.) the court took its usual recess.

AFTER RECESS.

r. BLISS. In order that the two Mr. Johnsons may go away, I would like to call them for a moment as witnesses to a single point on another case.

NEPHI JOHNSON recalled.

By **Mr. BLISS**:

Question. [Submitting a paper.] I hand you a petition indorsed on the back "1879, May 7th," and ask you to look at the names upon the second and third sheets, and see if you recognize any of them.

he COURT. What route does this relate to?

r. BLISS. It relates to route 44160. The two Mr. Johnsons can testify to a single fact in connection with that route, and as they desire to go home I introduce them out of order.

Q. [After examining the names.] Yes, sir; there are a good many of those names here that I recognize.

Q. Do you recognize the names and signatures upon the second and third sheets as pasted on that petition?—**A.** I recognize a good many of them.

Q. Let me call your attention to the name of Nephi Johnson, jr.—**A.** Yes, sir; that is my son.

Q. Was he ever in Oregon?—**A.** No, sir.

Q. Take those sheets and run them down, and tell us how many names you recognize as of persons whom you know or know of.—**A.** [After examining the petition.] Some twenty-five or thirty of them.

Q. Where do those persons reside?—**A.** They live along route 41119.

Q. In what State or Territory?—**A.** Utah.

Q. Did you go over both sheets or only one?—**A.** I went to there. [Indicating.] I see a great many that I know.

Q. They all live along route 41119, do they?—**A.** The names that I recognize do.

Q. Did they so live in 1879?—**A.** Yes, sir.

Q. I see there is a Nephi E. Johnson here?—**A.** Yes, sir; he is a nephew of mine.

Mr. BLISS. I am simply identifying this petition. There is no objection to offering it in evidence now, but it is not necessary at this time.

Q. The names you recognize are on the second and third sheets pasted on?—**A.** Yes, sir.

Q. Did you look at the first sheet to see if there were any names that you recognized?—**A.** I did not notice it in particular.

Q. Please look at the first sheet and see if there are any names that you recognize as residents of Utah?—**A.** [After examination.] No, sir; I do not see any on that first sheet.

Q. Now, please look at the sheets commencing with the fourth all below the fourth, and see if you recognize any names upon the

—A. There are some names on the fourth that I recognize.

Q. There are seven Smithsons; do you recognize those?—A. Yes, sir; they live at Pahreah, the terminus of route 41119.

Q. Do you recognize any names on the other sheet?—A. No, sir.

Q. You said one of these names was that of your son?—A. Yes, sir.

Q. Do you recognize his handwriting?—A. Yes, sir.

Q. [Exhibiting signature to witness.] That is his handwriting, is it?—A. Yes, sir.

Q. Route 41119 is in Southern Utah, is it not?—A. Yes, sir, right along the line.

Q. Along the southern line?—A. Yes, sir; right near by it.

Q. How far is that from Oregon?—A. It is four hundred miles south of Salt Lake.

Q. Do you know how far Salt Lake is south of Oregon?—A. No, sir; I do not.

Q. Have you any geographical knowledge of the subject?—A. No, sir; I have not; I could not say.

By Mr. MERRICK:

Q. Is it five hundred or one thousand miles?—A. Yes, sir; it must be that.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Do you recognize those names [indicating names on petitions]?—A. No, sir; I do not.

Mr. MERRICK. Whereabouts are they?

Mr. WILSON. Right on the back of the petition itself.

Q. You do not recognize any of those?—A. No, sir.

Q. Do you recognize any of those [indicating other names]?—A. No, sir.

Mr. MERRICK. Will you please identify them by your question?

Mr. WILSON. They are the names that appear on the back of where the petition is; and those on the last sheet also. He does not recognize any of those on the first sheet, or the last sheet.

Q. Do you know the handwriting of Senator Slater?—A. No, sir.

Q. Do you know the handwriting of Senator Grover?—A. No, sir.

Q. Do you know the handwriting of John Whiteaker who used to be Representative from Oregon?—A. No, sir.

W. D. JOHNSON recalled.

By Mr. BLISS:

Question. I hand you a petition, and ask you to look over it and tell us by sheets whether you recognize any of the names upon it. Take the first sheet and state whether you recognize any of the names upon that.—Answer. [After examining the petition handed to him by Mr. Bliss.] No, sir. I am not acquainted with any of the names on the first sheet.

Q. Now, take the names upon the second sheet.—A. [After examining.] I see some three or four names that I am acquainted with on the second sheet.

Q. Where do those people reside?—A. The first name I see is a man

resides at Kanab. Joseph Hamlin resides at Kanab, and W. T. Hart and George Potter. That is all I see there.

By the COURT:

Where is Kanab?—A. In Kane County, Utah.

Mr. BLISS. It is on route 41119.

The COURT. Yes; I wanted to know whether it was the same place.

By Mr. BLISS:

Now, take the third sheet.—A. [After examining the third sheet.] a number of names that I am acquainted with.

Where do they reside?—A. They reside at Kanab.

Whom do you see that you recognize?—A. I see J. H. Stamford, Harrison, George Mayes, J. G. Brown, jr., Benjamin Hamlin, F. L. Swarth, L. H. Fuller, L. John Luddle, Elijah Everett, Lawrence C. Ger, and L. Stewart. That is all I see there.

Do those people live in the vicinity of route 41119?—A. Yes, sir; live at Kanab.

Now, take the fourth sheet.—A. [After examination.] Yes, sir; some that I am acquainted with here.

Where do they live?—A. Some reside at Pahreah, and some reside at Kanab.

Look at the last sheet and see if you recognize any names there.—No, sir; I am not acquainted with any persons there.

You speak of them as residing at these places. Where did these several parties reside in 1879?—A. They resided at Kanab.

And Pahreah, I suppose?—A. Yes, sir.

Mr. WILSON. We have no questions.

Mr. BLISS. I will now read the petition.

Mr. TOTTEN. We object to that, your honor. It is out of order.

Mr. BLISS. We have a right to put in our evidence any way we please.

Mr. TOTTEN. I think not. We have gone into the matter by routes, have concluded the documentary evidence about a route, and now are ready to get in the verbal testimony of witnesses. Mr. Bliss proposes to stop the examination for the purpose of bringing in another matter with regard to another route. We say this course has a tendency to distract the minds of the jury and is not proper.

The COURT. There can be no doubt about the authority of the court to permit it. These witnesses are about going away, and although out of order they may be examined.

Mr. BLISS. [Reading:]

D. M. KEY,

Postmaster-General:

We, the subscribers, would respectfully represent that the mail route between Cannonville and Camp McDermott is of very great importance to the people of Eastern Utah; that it is by several hundred miles the nearest outlet to the railroad for the benefit of a very large section comprising the whole eastern portion of the State. We therefore very earnestly request and petition that the service on that route No. 44160 be made daily service and that the change may be made to take effect very soon. The reduction of the schedule to 60 hours during the summer months would also be very desirable but not so absolutely essential as daily service.

Witnessed on the reverse of the petition by a series of petitioners, and there are four sheets pasted on one after another with the names of the signers. The signers who are identified as living on route 41119 are on the second, third and fourth sheets, no names of people living down here being upon the reverse of the petition on the first sheet nor upon the last sheet.

Mr. WILSON. That is your statement about it.

Mr. BLISS. That is what the witnesses testified to.

Mr. WILSON. Have you read all that paper?

Mr. BLISS. I have not read the signatures, and I have not read indorsement.

Mr. TOTTEN. Do you propose to read the indorsement?

Mr. BLISS. Yes.

Mr. WILSON. Read it; and I ask the counsel to produce a letter by Senator Slater, asking the department not to take action on this petition until he can make an examination of it. After he has made that examination he put that indorsement on the petition.

Mr. BLISS. There is no such letter in existence, and Senator Slater did not do any such thing as is stated.

Mr. WILSON. We will see about that.

Mr. BLISS. I said there was none in existence. I should say there is none in my possession.

The COURT. [To Mr. Wilson.] You can produce it of course.

Mr. BLISS. If there is any in my possession I will produce it. I will read the indorsement:

Having examined the foregoing petition and list of names I find it correct in its statements, except that it effects the middle and southeastern sections of the north and northeastern sections being supplied from Kelton by way of Boise and The Dalles. The section being supplied by route 44160, is not less important a section through which it passes than the Kelton route was to the route through which it passes only a few years since. Therefore I recommend the granting of the petition of this petition.

J. H. SLATER

I concur with the foregoing.

L. F. GROVER

I concur with the above request.

JOHN WHITTEAR

Q. Do you know how far route 41119 is from Eastern Oregon?—A. No, sir; I do not; I judge a good ways. I never was there.

By Mr. MERRICK:

Q. About how far is it?—A. I couldn't say. I never was in that part of the country.

By Mr. BLISS:

Q. How far is it from Salt Lake City to Kanab?—A. About a hundred miles.

Q. South?—A. Yes, sir.

Q. What State or Territory lies west of Utah?—A. Nevada.

Q. What west of that?—A. California.

Mr. BLISS. The route petitioned for is stated to run from Coquille City, in Oregon, to Camp McDermont, in Nevada.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Do you know whether General Brady is acquainted with all the people who live along these various routes or not?—A. I could not say.

Q. Do you think he knows the signatures of all the people who live along this route?—A. I don't know. I never saw General Brady's signature, or know of, in my life.

Q. He never was out at your place?—A. Not that I know of.

Q. You do not think he is acquainted with everybody around in the neighborhood there?—A. I should judge not.

Mr. MERRICK. The men that got that petition up, though, were.
Mr. WILSON. He did not get it up.
Mr. MERRICK. If he was deceived, we will take that fact down. May the contractors deceived him.
Mr. WILSON. I am not saying anything about whether he was de-
red or not. I say he did not know these people.
Mr. BLISS. It did not occur to me before recess, your honor, that I
not put in the record of productiveness of route 44155 from The
les to Baker City. I will try and get it in as rapidly as possible.
he record is as follows :

Form of certificate.
(F.)

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

J. H. Ela, Auditor of the Treasury for the Post-Office Department, do hereby cer-
be annexed to be a true and correct statement from the records of this office,
ing the gross and the net revenues of the post-offices located on route No. 44155.
Dalles to Baker City, Oregon, from July 1, 1878, to June 30, 1880.
testimony whereof I have hereunto signed my name, and caused to be affixed my
of office, at the city of Washington, this 12th day of June, in the year of our Lord
housand eight hundred and eighty-two.
[AL.]

J. H. ELA, Auditor.

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Dalles, Oregon on routes 44154, 44164, 44302, and sup- ed by railroad.	3 qr., 1878...	\$591 57		\$126 57	.....
	4 " "	865 00		400 00	.....
	1 " 1879...	985 00		520 00	.....
	2 " "	1,038 00		573 00	.....
		3,479 57		1,619 57	.....
	3 qr., 1879..	1,022 00		557 00	.....
	4 " "	1,047 46		582 46	.....
	1 " 1880..	1,377 68		912 68	.....
	2 " "	1,586 16		1,211 16	.....
		5,033 30		3,263 30	.....
	3 qr., 1880..	1,389 35		849 35	.....
	4 " "	1,459 80		1,009 80	.....
	1 " 1881..	1,426 55		895 55	.....
	2 " "	1,569 03		1,038 03	.....
		5,844 73		3,792 73	.....
una, Oregon	3 qr., 1878..				.....
lished May 17, 1880.....	4 " " .....				.....
	1 " 1879...				.....
	2 " " .....				.....
	3 qr., 1879..				.....
	4 " " .....				.....
	1 " 1880...				.....
	2 " " .....				.....
	3 qr., 1880..	4 00		2 99	.....
	4 " "	12 48		10 41	.....
	1 " 1881..				\$2 78
	2 " "				2 80
		16 48		13 40	5 58
			Less credits ..	5 5c	.....
				7 82	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.
Deschutes, Oregon	3 qr., 1878..	\$3 00		\$1 20
	4 " " ..			
	1 " 1879..	3 00		3 00
	2 " " ..	2 50		2 50
		8 50		6 70
			Less credits ..	2 16
				4 54
	3 qr., 1879..	2 50		
	4 " " ..	22 00		11 28
	1 " 1880..	27 00		
	2 " " ..			
		51 50		11 28
			Less net	
			Excess credits	
	3 qr., 1880..			
	4 " " ..	29 00		
	1 " 1881..			
	2 " " ..	24 00		24 00
		53 00		24 00
			Less net	
			Excess credits	
Bake Oven, Oregon	3 qr., 1878..	1 00		1 00
	4 " " ..	19 00		7 49
Also, on route 44178	1 " 1879 ..	22 00		12 53
	2 " " ..	32 00		17 02
		74 00		38 04
	3 qr., 1879..			
	4 " " ..	15 00		
	1 " 1880..	24 00		
	2 " " ..	26 00		
		65 00		
	3 qr., 1880..	20 00		
	4 " " ..	46 00		15 84
	1 " 1881..	33 00		3 45
	2 " " ..	35 00		11 67
		134 00		30 96
			Less credits ..	5 50
				25 46
Coos Hollards, Oregon; established May 27, 1879; no account except a credit of \$7.04 in the 3d quarter of 1879.				
Antelope, Oregon	3 qr., 1878..			
	4 " " ..	27 76		27 76
	1 " 1879..	32 40		5 87
	2 " " ..	81 58		53 62
		141 74		87 25
Also on route 44157	3 qr., 1879..	31 35		31 35
	4 " " ..	25 44		1 89
	1 " 1880..	46 04		18 55
	2 " " ..	153 23		69 24
		256 06		121 63
	3 qr., 1880..	36 54		15 50
	4 " " ..	21 37		
	1 " 1881..	45 00		29 63

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
	2 qr., 1880..	\$65 14	.....	\$32 10	.....
		168 05	.....	68 22	\$1 48
			Less credits...	1 48	.....
				66 74	.....
No account.....					
Oregon.....	3 qr., 1878..				
	4 " " ..				
Feb'y 10, 1881.....	1 " 1879..	51 40		51 40	
Feb'y 21, 1881	2 " " ..	16 10		16 10	
		67 50		67 50	
	3 qr., 1879..	4 00			7 77
	4 " " ..	24 73		9 89	
	1 " 1880..	5 27			23 39
	2 " " ..	45 13		22 37	
		79 13		33 26	30 16
			Less credits...	30 16	
				3 10	
	3 qr., 1880..	18 97			42
	4 " " ..	19 88		2 21	
	1 " 1881..	10 01		1 17	
	2 " " ..				
		48 86		3 38	
			Less credits...	42	
				2 96	
D.....	3 qr., 1878..				
	4 " " ..				
\$140.....	1 " 1879..				3 34
	2 " " ..	32 65		3 72	
		32 65		3 72	
			Less credits...	3 34	
				38	
	3 qr., 1879..	23 69			5 73
	4 " " ..	43 27		15 33	
	1 " 1880..	54 43		20 00	
	2 " " ..	57 25		20 00	
		178 64		55 33	5 73
			Less credits...	5 73	
				49 60	
	3 qr., 1880..	37 57			
	4 " " ..	51 28		14 99	
	1 " 1881..	44 40			01
	2 " " ..	56 07		15 00	
		189 32		29 99	01
			Less credits...	01	
				29 98	
on.....	3 qr., 1878..				
	4 " " ..	1 51		1 51	
	1 " 1879..	1 72			4 46
	2 " " ..	15 38		15 32	
		18 61		16 89	4 46
			Less credits...	4 46	
				12 43	
	3 " 1879..	50 03		44 87	
	4 " " ..				
	1 " 1880..				

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
	2 qr., 1880..				
		\$50 03		\$44 87	
	3 qr., 1880..				
	4 " " ..	2 42			
	1 " 1881..	20 82		12 72	
	2 " " ..	21 29		15 94	
		44 53		28 66	
			Less credits..	1 13	
				27 53	
p Watson, Oregon.....	3 qr., 1878..	14 26		4 85	
	4 " " ..	18 29		9 87	
	1 " 1879..	33 90		19 75	
	2 " " ..	20 66		10 22	
		87 11		44 69	
	3 qr., 1879..	19 98		11 08	
	4 " " ..	22 70		11 97	
	1 " 1880..	24 38		12 88	
	2 " " ..	22 71		13 06	
		89 77		48 99	
	3 qr., 1880..	24 52		16 49	
	4 " " ..	24 89		12 94	
	1 " 1881..	29 07		16 55	
	2 " " ..	36 74		21 91	
		115 22		67 89	
Dayville, Oregon.....	3 qr., 1878..	5 00		1 72	
	4 " " ..	17 00		9 81	
Discontinued Jan'y 3, 1881.....	1 " 1879..	9 49		2 63	
Re-established " 31, 1882.....	2 " " ..	15 00		10 05	
		46 49		24 21	
	3 qr., 1879..				5 27
	4 " " ..	29 45		21 85	
	1 " 1880..	12 24		2 68	
	2 " " ..	13 70		13 70	
		55 39		38 23	5 27
			Less credits..	5 73	
				32 50	
	3 qr., 1880..	18 09		7 75	
	4 " " ..	2 25			7 27
	1 " 1881..				1 87
	2 " " ..				
		20 34		7 75	10 6
			Less net ..		11
			Excess credits..		2
Granite, Oregon.....	3 qr., 1878..	12 28		5 47	
	4 " " ..	22 41		9 75	
Also on route 44190.....	1 " 1879..	26 43		7 55	
Omitted from route 44155, Nov. 1, 1879.....	2 " " ..	7 04			
		68 16		22 77	
			Less credits..	14 46	
				8 31	
	3 qr., 1879..	45 88		13 6	
	4 " " ..	55 69		38 1	
	1 " 1880..				
	2 " " ..				
		101 48		46	

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
City, Oregon.....	3 qr., 1878..	\$344 21	.....	\$145 84	.....
	4 " " ..	417 14	.....	174 04	.....
route No. 44160.....	1 " 1879..	325 31	.....	121 52	.....
	2 " " ..	448 31	.....	222 14	.....
		1,534 97	.....	663 54	.....
	3 qr., 1879..	479 60	.....	240 48	.....
	4 " " ..	426 52	.....	195 54	.....
	1 " 1880..	443 17	.....	238 03	.....
	2 " " ..	399 96	.....	186 50	.....
		1,749 25	.....	860 55	.....
	3 qr., 1880..	423 42	.....	192 65	.....
	4 " " ..	439 37	.....	205 48	.....
	1 " 1881..	424 56	.....	227 65	.....
	2 " " ..	409 24	.....	189 32	.....
		1,696 59	.....	815 10	.....
sy, Oregon.....	3 qr., 1878..		.....	
	4 " " ..		.....
shed July 11, 1879	1 " 1879..		.....	
	2 " " ..		.....
	3 qr., 1879..		.....	
	4 " " ..		.....		\$3 44
	1 " 1880..	12 90	.....	\$2 65	.....
	2 " " ..	19 10	.....	9 46	.....
		32 00	.....	12 11	3 44
			Less credits...	3 44	.....
				8 67	.....
	3 qr., 1880..	73 35	.....	49 10	.....
	4 " " ..	59 12	.....	31 25	.....
	1 " 1881..	3 82	.....		19 28
	2 " " ..	84 75	.....	61 76	.....
		221 04	.....	142 11	19 28
			Less credits...	19 28	.....
				122 83	.....
ille, Oregon.....	3 qr., 1878..		.....	
	4 " " ..	75	.....	75	
hed June 27, 1878.....	1 " 1879..	6 09	.....	2 42	
	2 " " ..	5 16	.....	2 76	
		12 00	.....	5 93	
from this route Nov. 1, 1879.	3 qr., 1879..	3 58	.....		1 62
	4 " " ..	5 64	.....	1 50	
	1 " 1880..		.....	
	2 " " ..		.....
		9 22	.....	1 50	1 62
			Less net		1 50
			Excess credits.		12
ity, Oregon	3 qr., 1878..	65 22	.....	30 14	.....
	4 " " ..	105 06	.....	62 29	.....
oute 44190	1 " 1879..	133 17	.....	78 01	.....
	2 " " ..	119 60	.....	74 94	.....
		423 05	.....	245 38	.....
	3 qr., 1879..	103 92	.....	50 36	.....
	4 " " ..	183 34	.....	119 72	.....
	1 " 1880..	137 77	.....	77 28	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
	2 qr., 1880..	\$134 23		\$82 71	.....
		559 26		330 07	.....
	3 qr., 1880..	158 02		87 62	.....
	4 " " ..	111 19		34 84	.....
	1 " 1881..	131 61		66 91	.....
	2 " " ..	121 59		50 20	.....
		522 41		239 57	.....
Penola, Oregon.....			No account		.....
Discontinued April 19, 1878.....					.....
Sumter, Oregon, discontinued October 1, 1878.....					.....
	3 qr., 1878..	30 62		19 00	.....
	4 " " ..				.....
	1 " 1879..				.....
	2 " " ..				.....
		30 62		19 00	.....
Auburn, Oregon.....	3 qr., 1878..	25 00		25 00	.....
	4 " " ..	45 60		16 70	.....
	1 " 1879..	40 00		15 97	.....
	2 " " ..	37 00		14 20	.....
		147 60		71 87	.....
	3 qr., 1879..	46 95		19 81	.....
	4 " " ..	38 95		41	.....
	1 " 1880..				.....
	2 " " ..	1 00			.....
		86 90		20 22	39 46
			Less net		20 22
			Excess credits		19 77
	3 qr., 1880..	27 90			2 06
	4 " " ..	26 00		1 61	.....
	1 " 1881..	17 00		11 31	.....
	2 " " ..	26 00			.....
		96 90		12 92	.....
			Less credits	2 06	.....
				10 86	.....
Baker City, Oregon.....	3 qr., 1878..	494 61		223 17	.....
	4 " " ..	460 30		173 40	.....
Also on routes 44161, 44162, and 41131.....	1 " 1879..	535 65		240 65	.....
	2 " " ..	461 96		166 96	.....
		1,952 52		804 18	.....
	3 qr., 1879..	446 85		121 85	.....
	4 " " ..	496 91		171 71	.....
	1 " 1880..	627 86		302 86	.....
	2 " " ..	582 00		232 00	.....
		2,154 02		829 02	.....
	3 qr., 1880..	639 43		260 43	.....
	4 " " ..	616 72		274 22	.....
	1 " 1881..	566 76		224 26	.....
	2 " " ..	602 77		200 27	.....
		2,425 68		1,048 18	.....

Mr. BLISS. The gross revenue of the post-office at The Dalles, which specified as also being on routes 44154, 44164, 44202, and supplied by railroad, for the year ending June 30, 1879, was \$3,479.57; the net revenue, \$1,619.57. For the fiscal year ending June 30, 1880, the gross revenue was \$5,033.30; the net revenue, \$3,263.30. For the fiscal year ending June 30, 1881, the gross revenue was \$5,844.73; and the net revenue \$3,792.73. For the post-office at Nansene, the gross revenue for third and fourth quarters of 1880 was \$16.48; and the net revenue, \$2. This office was established May 17, 1880. For the post-office at Chutes, the gross revenue for the fiscal year ending June 30, 1879, was \$8.50; the net revenue, \$4.54. For the fiscal year ending June 30, 1880, the gross revenue was \$51.50; the net revenue, \$30.70. For the fiscal year ending June 30, 1881, the gross revenue was \$53; and there was a loss of \$67.76. For the office at Coos Hollards, which was established on May 27, 1879, there is no account, except a credit of \$7.04 in third quarter of 1879.

For Antelope post-office, also on route 44157, the gross revenue for fiscal year ending June 30, 1879, was \$141.74; the net revenue, \$87.25. For the fiscal year ending June 30, 1880, the gross revenue was \$256.06; the net revenue, \$121.63. For the fiscal year ending June 30, 1881, gross revenue was \$168.05; the net revenue, \$66.74. For the office at Grade there is no account. The office at Bridge Creek, Oregon, was discontinued February 10, 1881, and re-established February 21, 1881. The gross revenue for the fiscal year ending June 30, 1879, was \$67.50; the net revenue, \$67.50. For the fiscal year ending June 30, 1880, the gross revenue was \$79.13, and the net revenue, \$3.10. For the fiscal year ending June 30, 1881, the gross revenue was \$48.86, and the net revenue, \$2.96. The post-office at Mitchell is also on routes 44140 and 44180. The gross revenue for the fiscal year ending June 30, 1879, was \$32.65; the net revenue, \$0.38 cents. For the fiscal year ending June 30, 1880, the gross revenue was \$178.64; the net revenue, \$1.60. For the fiscal year ending June 30, 1881, the gross revenue was \$189.32, and the net revenue, \$29.98. At the post-office at Mount St. Helens, the gross revenue for the fiscal year ending June 30, 1879, was \$61; net revenue, \$12.43. For the fiscal year ending June 30, 1880, the gross revenue was \$50.03; the net revenue, \$44.87. For the fiscal year ending June 30, 1881, the gross revenue was \$44.53; the net revenue, \$27.53. For Camp Watson post-office for the fiscal year ending June 30, 1879, the gross revenue was \$87.11; the net revenue, \$69. For the fiscal year ending June 30, 1880, the gross revenue was \$89.77; the net revenue, \$48.99. For the fiscal year ending June 30, 1881, the gross revenue was \$115.22; the net revenue, \$67.89. For the post-office at Dayville discontinued January 30, 1881, and re-established January 31, 1882, the gross revenue for the fiscal year ending June 30, 1879, was \$46.49; the net revenue, \$24.21. For the fiscal year ending June 30, 1880, the gross revenue was \$55.39; the net revenue, \$32.50. For the fiscal year ending June 30, 1881, the gross revenue was \$20.34, and there was a loss of \$2.90. The post-office at Granite, Oregon, was also on route 44190, and was omitted from route 44155 on November 1, 1879. The gross revenue for the fiscal year ending June 30, 1879, was \$68.16; the net revenue, \$8.31. For the third and fourth quarters of 1879 the gross revenue was \$101.48, and the net revenue, \$46.05.

Mr. WILSON. Allow me to interrupt you. How do you get Granite on this route?

Mr. BLISS. I cannot tell you, except that it was put on by the Post-

master-General, as I understand it. One of the witnesses testified so here this morning. It was not originally on this route, but I think you will find from the records that it was put on without addition of pay or distance.

Mr. WILSON. That is one of the things we want produced.

Mr. BLISS. It is in the Post-Office Department for you to produce. The next is Canyon City, also on route No. 44160. The gross revenue for the fiscal year ending June 30, 1879, was \$1,534.97; the net revenue, \$663.54. For the fiscal year ending June 30, 1880, the gross revenue was \$1,749.25; the net revenue, \$860.55. For the fiscal year ending June 30, 1881, the gross revenue was \$1,696.59; the net revenue, \$815.10. The post-office at John Day was established July 11, 1879. For the fiscal year ending June 30, 1880, the gross revenue was \$32; the net revenue, \$8.67. For the fiscal year ending June 30, 1881, the gross revenue was \$22.04; the net revenue, \$122.83. The post-office at Robinsville was established June 27, 1878, and omitted from this route November 1, 1879. The gross revenue for the fiscal year ending June 30, 1879, was \$12; the net revenue, \$5.93. The gross revenue for the fiscal year ending June 30, 1880, was \$9.22; and there was a loss of 12 cents. The post-office at Prairie City, Oregon, is also on route 44190. The gross revenue for the fiscal year ending June 30, 1879, was \$423.05; the net revenue, \$245.38. The gross revenue for the fiscal year ending June 30, 1880, was \$559.26; the net revenue, \$330.07. The gross revenue for the fiscal year ending June 30, 1881, was \$522.41; the net revenue, \$239.57. The post-office at Penola was discontinued April 19, 1878, and there is no account. The post-office at Sumpter was discontinued October 1, 1878. The gross revenue for the third quarter of 1878 was \$30.62; the net revenue, \$19.09. The gross revenue of the post-office at Auburn for the fiscal year ending June 30, 1879, was \$147.60; the net revenue, \$71.87. For the fiscal year ending June 30, 1880, the gross revenue was \$86.90; and there was a loss of \$19.27. For the fiscal year ending June 30, 1881, the gross revenue was \$98.90; the net revenue, \$10.86. Baker City, Oregon, is also on routes 44161, 44162, and 41131. The gross revenue for the fiscal year ending June 30, 1879, was \$1,952.52; net revenue, \$804.18. For the fiscal year ending June 30, 1880, the gross revenue was \$2,154.02; the net revenue, \$829.02. For the fiscal year ending June 30, 1881, the gross revenue was \$2,425.68; the net revenue, \$1,048.18.

Mr. WILSON. Have you any account of the mails carried through these various routes connecting with Baker City?

Mr. BLISS. I am putting in all that I have. When you come to your case you can put in anything of that kind that exists. If you want to go into the through routes, I propose to show you that there was no through mail over these routes when I get my witnesses on the stand.

Mr. WILSON. I would like to see you do it.

Mr. BLISS. I propose to do it.

HENRY W. WHEELER recalled.

By Mr. BLISS:

Question. Will you produce the warrants upon route No. 44155?—
Answer. I have them here. [Producing warrants.]

Mr. BLISS. The first is number 12074, dated November 14, 1878, for \$176.59, to the order of H. M. Vaile, assignee, and indorsed by H. M. Vaile. Annexed is an account on various routes and for route 44155 \$2,072 due per quarter. An order annexed, dated October 1, 1878:

The Auditor of the Treasury for the Post Office Department will please pay to John R. Miner, or order, the sum of \$180.

That order does not relate to this route. It relates to another route. It is unnecessary to read it.

[The set of papers last read was marked by the clerk 32 D.]

The next is number 12080, dated November 14, 1878, for \$446. Pay to the order of P. J. Wyckoff, subcontractor of John M. Peck. Indorsed, P. J. Wyckoff. Also annexed warrant No. 18082, dated November 14, 1878, for \$1,411.76, to the order of H. M. Vaile, subcontractor of John M. Peck. Indorsed, H. M. Vaile. Annexed is an account on various routes, among them 44155. Pay H. M. Vaile, Washington, D. C., \$2,072, less \$660.24 collection, leaving net \$1,411.76. A notice, dated October 1, 1878, notifying the Auditor of the Treasury for the Post-Office Department that on route 44155, from The Dalles to Baker City, of which J. M. Peck is contractor, a subcontract with H. M. Vaile has been filed. Signed by Thomas J. Brady, Second Assistant Postmaster-General, and, in the corner, Wm. H. T.

[The set of papers last read was marked by the clerk 33 D.]

The next is No. 13923, dated January 18, 1879, for \$4,857.93. Pay H. M. Vaile, subcontractor. Indorsed, H. M. Vaile, subcontractor. An account stated, showing due per contract, \$2,072, and \$5,698 more per order of November 15, 1878. An order, dated November 1, 1878. Pay H. M. Vaile, or order, \$4,982.93, out of any moneys due on route 44155, from The Dalles to Baker City, for the quarter ending December 31, 1878. Signed, John M. Peck, contractor, and witnessed by M. C. Rerdell, and H. A. Barnaclough, postmaster at Trinidad, Colorado.

[The set of papers last read was marked by the clerk 34 D.]

The next is No. 3003, dated April 23, 1879, for \$12,242.45. Pay J. A. J. Creswell, president Citizens' National Bank, assignee of John M. Peck, or order. An account stated, relating, among others, to route 44155, showing \$7,770 due from January 1 to March 31, 1879. An order, dated Chico Springs, New Mexico, November 1, 1879. Pay H. M. Vaile the amount due on various routes, including 44155, for the quarter ending March 31, 1879. Signed, John M. Peck, contractor, and witnessed by M. C. Rerdell, and Harvey G. Gray, postmaster at Apache, New Mexico.

[The set of papers last read was marked by the clerk 35 D.]

The next is number 6458, dated July 26, 1879, for \$13,296.23. Pay W. N. Roach, cashier Citizens' National Bank, assignee of John M. Peck, or order. An account stated showing due on route 44155, \$7,770, for the quarter ending June 30, 1879. Annexed an order signed by John M. Peck, dated, Chico Springs, New Mexico, November 1, 1878, for the money due him upon various routes for the quarter ending June 30, 1879, route 44155 being specified. Witnessed by M. C. Rerdell and Harvey G. Gray, postmaster at Apache, New Mexico.

[The set of papers last read was marked by the clerk 36 D.]

The next is No. 10317, dated November 8, 1879, to the order of John A. J. Creswell, president of the Citizens' National Bank, assignee of John M. Peck, for \$16,566.75. Annexed an account for this route showing \$7,770 due per contract for the quarter ending September 30, 1879, and \$10,360 more per order.

[The set of papers last read was marked by the clerk 37 D.]

The next is No. 233, dated January 28, 1880, for \$22,022.89. Pay Thomas C. Pearsall, cashier Citizens' National Bank, Washington, D. C., assignee of J. M. Peck. An account annexed showing the amount due upon various routes, including 44155, \$18,130. An order annexed

dated November 1, 1878. Pay to the order of H. M. Vaile, the amount due for the quarter ending December 31, 1879, on certain routes, 44155 being specified. Signed by Peck and witnessed by M. C. Rerdell and James C. Leary, deputy postmaster at Apache, New Mexico.

[The set of papers last read was marked by the clerk 38 D.]

The next is No. 34112, dated April 1, 1880, for \$21,234.10. Pay J. A. J. Creswell, president Citizens' National Bank, assignee of John M. Peck. Indorsed by Creswell. Stamped, paid. Annexed an account stated, showing due on this route \$18,130. Annexed an order of Peck, dated April 1, 1879, to pay to H. M. Vaile the amount due on various routes for the quarter ending March 31, 1880, number 44155 being specified. Witnessed by M. C. Rerdell and James C. Leary, deputy postmaster at Apache, New Mexico.

[The set of papers last read was marked by the clerk 39 D.]

The next is No. 7701, dated July 26, 1880. Pay to Thomas C. Pearsall, cashier of Citizens' National Bank, assignee of John M. Peck, \$22,073.17. Stamped paid. Indorsed by Pearsall. Account stated for this among other routes, showing \$18,130 due, per contract, from April 1st to June 30, 1880. Less \$2,590, per order number 3438, from May 1, 1880, and deducting \$1,736. Add one month's extra pay on service dispensed with. Order signed by Peck, dated April 1, 1879. Pay H. M. Vaile, or order, the amount due on the specified routes, including 44155, for the quarter ending June 30, 1880. Witnessed by M. C. Rerdell and James C. Leary, deputy postmaster at Apache.

[The set of papers last read was marked by the clerk 40 D]

Q. Here is an account for the quarter ending September 30, 1880, with no warrant annexed.—A. There has not been time for that to be returned yet.

Q. It has not come back to the department?—A. No, sir.

Mr. BLISS. It is an account stated on various routes—among others 44155, showing \$15,540 due per contract, and \$1,717.28 more per order No. 8247, from August 1, 1880. Annexed is an order of John M. Peck, dated April 1, 1879, to pay to H. M. Vaile the amount due on the route specified for the quarter ending September 30, 1880, route 44155 being named. It is witnessed by M. C. Rerdell and James C. Leary, deputy postmaster at Apache, New Mexico.

The WITNESS. That draft ought to have been returned. It could not be found.

[The set of papers last read was marked by the clerk 41 D.]

Q The next is an account for the quarter ending December 31, 1880, with no warrant?—A. I presume that could not be found. I have produced all that we could find.

Mr. BLISS. It is an account specifying route 44155, showing \$18,130 due for the quarter ending December 31, 1880.

[The paper last read was marked by the clerk 42 D.]

The next is No. 6295, dated May 9, 1881, for \$27,691.60. Pay to H. M. Vaile, subcontractor. Stamped, paid May 11, 1881. Indorsed by H. M. Vaile, subcontractor. An account stated showing due on this route \$18,130, and \$367.34 for remission of part of reduction ordered February 1, 1881.

[The set of papers last read was marked by the clerk 43 D.]

The next is No. 1221, dated July 31, 1881, for \$30,816.11, to H. M. Vaile, or order. Indorsed by H. M. Vaile. An account annexed showing the amount due on various routes, 44155 being specified \$18,130.

[The set of papers last read was marked by the clerk 44 D.]

Q. I have here an account stated for the quarter ending September 30, 1881, with no warrant.—A. I do not think it is time for that to be returned to the department.

Mr. BLISS. On route 44155, due per contract, from July 1 to September 30, 1881, \$18,130, less, per order No. 9074, from August 1, 1881, \$9,960.24; total, \$8,169.76. Add one month's extra pay, \$1,381.33.

[The set of papers last read was marked by the clerk 45 D.]

There are later payments that come down to the period after Mr. Brady went out of the office, and I do not care to read them.

Mr. WILSON. We do not care anything about it.

Mr. BLISS. Mr. Merrick suggests that I had better read this one:

Account for quarter ending December 31, 1881. Amount due on route 44155, \$3,108. That is all, I believe.

[The paper last read was marked by the clerk 46 D.]

Mr. WILSON. Do these warrants cover payments on other routes?

Mr. BLISS. Oh, yes; the account shows several routes and the warrant is the amount of the aggregated sum.

Mr. WILSON. We shall have to examine them because this fact may lead to confusion.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. [Submitting warrants to witness.] Look at these and state to the jury whether in any of them the full quarter's pay has not been paid, and, if not, state how much less than a full quarter's pay, and why it was left so.—A. [Referring to papers.] For the quarter ending December 31, 1878, the full quarter's pay is \$4,982.93, less fines and deductions, \$125.

Q. There was no warrant issued for the full quarter's pay?—A. It was issued for the full quarter's pay, less \$125 for fines and deductions.

Q. What were these fines and deductions for?—A. Failures, penalties, &c.

Q. See if you find any more.—A. [Referring to papers again.] For the quarter ending March 1, 1879, the full amount is \$7,770, and the deduction is \$99.29.

Q. And a warrant issued for the difference?—A. Yes, sir.

Q. Go through all of them?—A. For the quarter ending September 30, 1879, the full amount of the pay is \$16,666.02, and the deduction \$99.34.

Q. For the difference the warrant was issued?—A. Yes, sir. For the quarter ending December 31, 1879, the quarterly pay was \$18,130, and the deduction \$1,268.99.

Q. And the warrant was issued for the difference?—A. Yes, sir. For the quarter ending March 31, 1880, the quarterly pay was \$18,130 and the deduction \$1,027.96, and the warrant was issued for the difference. For the quarter ending December 31, 1880, the quarterly pay was \$18,130, and the deduction \$402.09, and the warrant was issued for the difference. For the quarter ending March 31, 1881, the quarterly pay was \$18,130 and the deduction \$3,416.35, and the warrant was issued for the difference. For the quarter ending June 30, 1881, the quarterly pay was \$18,130, and the deduction \$119, and the warrant was for the difference. For the quarter ending September 30, 1881, the quarterly pay was \$9,551.09, and the deduction \$213.42, and the warrant was for the difference.

The COURT. Why is it under the same contract that the pay was so much larger some quarters than others?

Mr. WILSON. Sometimes they reduce the service, take off trips, and add on trips. That makes a change in the pay.

The WITNESS. That is all of the warrants for this route.

By Mr. WILSON:

Q. [Resuming.] I do not know whether you are acquainted with it or not, but it may save time. Suppose there is temporary service put on, and the party with whom the contract for the temporary service is made is paid by the contractor. Would you then issue the warrant to the contractor?—A. Yes, sir.

Q. Now, what would you require to have in the office before you would issue the warrant to the contractor?—A. I should issue the warrant to the contractor in any event, unless there was an order to the contrary.

Q. Suppose now that a postmaster at the end of the route has put on temporary service and made a contract with somebody to carry the mail temporarily. Then suppose that the contractor pays for that temporary service and produces to you the receipt that he has paid, what do you do with it?—A. He does not produce it to our office; he produces it to the Second Assistant Postmaster-General.

Q. How do you get the information?—A. If the amount is chargeable to the contractor, it is sent up in an order to the effect to recognize the service of the temporary man and charge it to the contractor.

Q. If the contractor pays it, you give the money?—A. Yes, sir.

Q. Otherwise you deduct it from him?—A. Yes, sir.

Mr. BLISS. [To counsel for the defendants.] I think, if you would consent, that we might make up on each route something in the nature of a tabular statement in this case. We might save considerable time in reading. We will produce warrants and subject the statement to your revision and correction. I think we could save time. We take a half or three-quarters of an hour on every route reading these things. I think in the way I suggest we could arrange to put them in in five minutes.

Mr. WILSON. I should be very glad to do anything I can to abbreviate this business. I thought you had made it up.

Mr. BLISS. Not showing those things.

Mr. WILSON. I thought you had them made out, and I thought they were printed.

Mr. BLISS. No.

By Mr. WILSON:

Q. [Resuming.] Do you find there the warrant for September, 1878? Look on the first sheet and see if there is not a deduction of \$219.12.—

A. [After referring to papers.] Yes, sir; there is a deduction of \$219.12 for the quarter ending September, 1878.

Q. Now, then, go to the quarter ending June 30, 1880, and see if you do not find a deduction of \$416 there?—A. [Referring to the paper.] The deduction is \$416.64.

By Mr. BLISS:

Q. Let me ask you this: The \$219 and odd cents you say is a deduction. On what ground is it given as a deduction? It says collection there somewhere, does it not?—A. The amount just above that is for collections, \$441.12; then fines and deduction, \$219.12.

Mr. BLISS. To abbreviate as much as possible, I have the other receipts for the warrants, one dated January, 1879, for warrant 13923,

H. M. Vaile, contractor, by John R. Miner, attorney. Then are seven receipts for various warrants, coming down to and including October 19, 1880, which are signed by the assignees of the person whom those warrants were drawn. I do not know that I desire attention particularly to them.

WILSON. Who is assignee?

A. J. Creswell, president; W. N. Roach, cashier; Thomas C. [illegible], cashier. These papers are specified in the warrants.

WILSON. What is the use of putting those in?

BLISS. Simply to account for those warrants.

WILSON. There is no doubt of the parties having received the

BLISS. Then there is a receipt dated January 28, 1882, for warrants 1005 and 1009, signed H. M. Vaile, contractor, and receipt February 11, 1882, for warrant 1930, signed H. M. Vaile, contractor, and schedule showing the amount of payment. The total of payments since the 1st of July, 1878, on this route is \$170,000, less \$7,407.20 of deductions, leaving \$177,451.91; add to that of remissions, making a total net payment of \$177,084.57.

WILSON. Covering what period?

BLISS. From the 1st of July, 1878, down to the fourth quarter, 1881, paid the 1st of February, 1882. Your honor, the topographer has been so interrupted he has not been able to complete the maps on this route. I offer in evidence the schedule upon this

is and recapitulation of payments made to Dorsey, Miner, and Peck, their subcontractors and assignees, on nineteen routes below described.

Termini.		State.	Pay accrued.	Fines and deductions, &c.	Remissions, &c.	Total payments.
From—	To—					
The Dalles.	Baker City.	Oregon..	\$177,084 57	\$7,407 20	\$367 34	\$170,044 71

Route No.	Terminal		Auditor's report.		Period for which paid.	Pay per quarter.	Loss fines and deductions.	Amount of pay.	Warrant or draft.		To whom paid.	Contractor, assignee, or assignee.
	From—	To—	No.	Date.					No.	Date.		
44155	The Dalles.	Baker City.	Oregon.	29710	Nov. 13, 1878	3 qrs., 1878	92, 072 00	\$219 19	W. 12002	Nov. 14, 1878	H. M. Valle	Subcontractor.
				10556	Jan. 17, 1879	4 qrs., 1878	4, 982 93	125 00	W. 13023	Jan. 18, 1879	H. M. Valle	Subcontractor.
				11306	April 23, 1879	1 qr., 1879	7, 770 00	99 99	W. 3003	Apr. 23, 1879	H. M. Valle, J. A. J.	Assignee.
				20044	July 25, 1879	3 qrs., 1879	7, 770 00	.....	W. 6458	July 26, 1879	Creswell, pres. H. M. Valle, W. N.	Assignee.
				31932	Nov. 7, 1879	3 qrs., 1879	16, 696 09	99 34	W. 10317	Nov. 8, 1879	Rosch, cash. H. M. Valle J. A. J.	Assignee.
				2344	Jan. 27, 1880	4 qrs., 1879	18, 130 00	1, 308 99	W. 233	Jan. 27, 1880	Creswell, pres. H. M. Valle, Theo. C.	Assignee.
				10567	April 21, 1880	1 qr., 1880	18, 130 00	1, 027 96	W. 3412	Apr. 21, 1880	Pearson, cash. H. M. Valle, J. A. J.	Assignee.
				20781	July 23, 1880	2 qrs., 1880	17, 257 18	416 64	W. 7071	July 24, 1880	Creswell, pres. H. M. Valle, Theo. C.	Assignee.
				28676	Oct. 18, 1880	3 qrs., 1880	17, 257 28	.....	W. 10927	Oct. 19, 1880	Pearson. H. M. Valle, Theo. C.	Assignee.
				6168	Feb. 2, 1881	4 qrs., 1880	18, 130 00	* 402 09	W. 2503	Feb. 2, 1881	Pearson, cash. H. M. Valle	Subcontractor.
				15167	May 6, 1881	1 qr., 1881	18, 130 00	3, 416 35	W. 6395	May 9, 1881	H. M. Valle	Subcontractor.
				23239	July 27, 1881	2 qrs., 1881	18, 130 00	119 00	W. 1221	July 30, 1881	H. M. Valle	Subcontractor.
				4334	July 19, 1882	3 qrs., 1881	9, 531 09	213 42	W. 1007	Jan. 24, 1882	H. M. Valle	Subcontractor.
				7237	Feb. 1, 1883	4 qrs., 1881	2, 106 00	.....	W. 1930	Feb. 7, 1883	H. M. Valle	Subcontractor.
							177, 064 57	7, 407 90	Deductions.			
									Remissions.			
								177, 451 91				
								367 34				
								177, 064 57				

* Remissions.

JOHN M. FISK sworn and examined.

By **Mr. BLISS**:

Question. Where do you reside?—Answer. Canyon City, Oregon.

Q. How long have you resided there?—A. Fifteen years.

Q. What is your business?—A. My business at present is farming.

Q. Have you had anything to do with mail route 44155?—A. Yes,

Q. What did you have to do with it?—A. I was employed as carrier a portion of the route.

Q. What portion of the route?—A. From Canyon City to Baker City.

Q. Do you know how far that is?—A. I don't know as it has been measured. There have been varying statements. Every person has his own idea.

Q. Well, about?—A. I should judge, about ninety miles.

Q. When were you employed on that route first?—A. I commenced there the 5th of September, 1878.

Q. Under whom?

The WITNESS. Do you mean the firm?

Mr. BLISS. Yes.

A. A man by the name of Moore first employed me.

Q. Why do you say first employed you? Were you afterwards employed by somebody else?—A. I was kept there by other parties.

Q. Who were they?—A. Mr. Williamson.

Q. Who was Mr. Williamson?—A. A gentleman who came out there as an agent, I believe.

Q. Do you know for whom?—A. He represented he was for Miner, Peck & Co.

Q. You started on the 5th of September, 1878?—A. Yes, sir.

Q. Do you know who had been carrying the mail just before that?—A. Yes, sir.

Q. Who?—A. Mr. Kellogg had been running on that route from Baker City to Canyon City.

Q. How long did you continue after the 5th of September, 1878?—A. Continued until the 15th of April, 1879.

Q. During that period from whom did you receive your directions?—A. From Mr. Williamson.

Q. From whom did you receive your pay?—A. I received it from an office agent of the company—where they had an office in Canyon City.

Q. Who was it?—A. Messrs. Poindexter and Clark, a firm.

Q. Who had an office there?—A. This company, Miner, Peck & Co.

Q. Before the 5th of September, 1878, were you in the employ of anybody else on that route?—A. Not directly on that route. From The Dalles to Canyon City, I was.

Q. The other portion of it?—A. Yes, sir.

Q. When you commenced on the 5th of September, 1878, how many trips were made per week?

Mr. CHANDLER. We object to any testimony on this matter. Now, they have undertaken to impugn the record in this case only in the particular. They have laid no foundation in the indictment for this indictment. They simply charge that this order was void because certain petitions which were filed are alleged to be fictitious, fraudulent, and forged. Now, if they are going to affect this order in any way, certainly they have got to set forth in the indictment the reasons why they propose to affect it, or upon what ground they propose to affect it, and

the inquiry is limited to the ground which they specify in the indictment. Now, they do not charge anything improper or wrong of the slightest nature in the world touching or respecting this route except the fact that these petitions that they have introduced were filed in the office, and they have admitted without introducing them that they were all correct and genuine and supported the department in making this order. Now, if your honor please, it certainly is a well settled principle of criminal pleading that the proof must be limited to the allegations, and where they are undertaking to affect the official conduct of the party—and that is all there is in this inquiry now, so far as this route is concerned—they are limited to the charges which they make against that conduct. In the case in 15th Pickering the court says :

Where a person is indicted for libel, containing general charges of official misconduct against a magistrate, the court are authorized to require him previously to the trial in case he intends to give the proof in evidence to file a bill of particulars specifying the instances of misconduct which he proposes to prove, and he will not be permitted to give in evidence any other instances of misconduct than those definitely specified in the bill of particulars.

In the case in Pennsylvania they hold this :

In a conspiracy case, precision of the description of the offense is of the last importance to the innocent, for it is this which marks the limits of the accusation and fixes the proof of it.

Now, this order is presumed legally to have been made in good faith, and the only allegations in this indictment that put in question the integrity and propriety of this order are the allegations touching these petitions. It is assailed from no other standpoint. They do not claim for any other reason that the order was not perfectly consonant with the public good. They do not undertake to impeach it on the ground that the order did not conform to the——

Mr. BLISS. To what order do you refer ?

Mr. CHANDLER. I am referring to this route 44155.

Mr. BLISS. Specify the order.

Mr. CHANDLER. The only order that you set out here, the only order that you complain of, that this route was increased and expedited and the Government thereby defrauded.

Now, I say that this order having been assailed upon no other ground than that it was supported by or alleged to have been the offspring of fraudulent, fictitious, and corrupt petitions, and that evidence having absolutely failed, the petitions having all been introduced here, and the Government having conceded that the petitions were valid and correct, there is no foundation laid for any further inquiry. The ground upon which they propose to impeach this order having sunk under their feet, there surviving none of these allegations which can in any way impair this order, no proof should be admitted further upon the subject. I admit if this proof had sustained their allegations, and if the proof had shown them to be fraudulent they might pursue the inquiry so far as to connect other persons with those petitions. But the petitions are genuine, they are truthful, they came into the office in the due course of business, they fully by their import and effect support this order, and that being the only ground upon which the order was assailed, and that ground having failed, there is nothing left to question this route.

Now, why do we sit here from day to day ? One whole day has been wasted upon this route, and not a shade of impropriety has been cast upon the conduct of any officer connected with it ; and if we are to pursue this fruitless inquiry under circumstances similar to those which surround this case you may sit here until October and accomplish nothing.

Now, the Government has elected the ground upon which it will assail this order. They set out in the indictment the reasons for questioning the integrity of this order, and those reasons are all presented and all proven to be false. Now, I say there is nothing to support, nothing to sustain further proof. The main proof having failed the incident must fail with it.

Mr. MERRICK. I think your honor has settled the question before. The order stated there is stated as an overt act. Your honor has said, as I understand it, that it was not necessary to put our evidence in the indictment.

The COURT. You must have your allegations there, though.

Mr. BLISS. Our allegations are here, sir.

Mr. MERRICK. The allegations are there, but we are not limited to the proof of the allegations in the indictment alone. The indictment is made up of the allegations of the offense which under section 5440 and the amended section is the offense of conspiracy, which offense is constituted of a conspiracy to defraud the United States and some overt act done by one of the conspirators. That is the offense. Now, your honor has said in reference to the proof of the conspiracy that we are not limited to the indictment for the specific statement of the fact contained in the indictment. We do not spread all the evidence of it there. We charge the crime, and then we prove the crime charged by evidence not contained in the indictment.

Now, suppose this route had been expedited in 1878, at an immense cost to the government of say some fifty or sixty thousand dollars; and suppose the contractor had been paid for that expedition, and yet in reality the expedition had never been put on for a year after the time of the order, a year after the time when he had been receiving pay for it, does your honor suppose that that would not be a very material fact going to show the conspiracy to defraud the Government? Would it not be a material fact, because it would show that the Government had unquestionably been swindled; and, if swindled by certain parties, raising a presumption that those parties, whose co-operative acts accomplished the swindling, were conspiring to produce it? It is the same identical point that your honor has ruled on three or four times before, and I do not know that I need say another word about it.

Again, we want to show that the affidavit made by the contractor in this case was utterly false—the affidavit upon which the order was obtained. Now, it may be that so far as this particular route is concerned, the charge of fraudulent conduct may not come home to Mr. Brady, because Mr. Brady may have been deceived by these other parties so far as this route is concerned. But suppose he was deceived as to this route, or that we fail to bring home to him knowledge of the frauds; still, if the frauds were perpetrated by these co-conspirators upon this route, they are chargeable with the conspiracy alleged in this indictment to defraud the United States.

Suppose, again, that they are running this route, and they direct their carrier, who is taking the mail, to go out from Baker City, and come back into Baker City on time, so that it shall be correctly reported to the department that the mail is run on time, but that he can leave the middle of the route to take care of itself. If such a state of things should be proved, and it may be proved by these witnesses, is not that a patent fraud on the United States for the purpose of taking money from the Treasury, to which they are not entitled, under the pretense of the execution of a contract which they have obtained from the United

States? Why it seems to me, if your honor please, that the testimony is as plainly competent and as directly applicable as any testimony could possibly be, and I have trespassed too long upon the court in view of the fact that your honor has already decided the question on two, I think, on three occasions.

Now, the charging part of the indictment as to the fraudulent oaths and fraudulent statements is full and complete. The charge of the crime is full and complete as a general thing. All the necessary elements to constitute the crime in the charging part of the indictment are there, and if anything is said about this route in the indictment we are not limited to what particularly is said. Suppose the route had been left out entirely. Suppose there had not been a word said about the route in the indictment and yet the charge of conspiracy was properly made in the indictment, and an overt act not connected with this route had been laid in the indictment, might we not introduce proof in reference to this route to establish the conspiracy, and having established the conspiracy in reference to this route, prove the overt act as laid in the indictment for the completion of the offense? According to the theory of the counsel, as has been once or twice said by your honor from the bench, there would be no such thing as proving the conspiracy at all. I think the question has been settled by the court, and I need say no more about it.

Mr. BLISS. Will your honor look on pages 19, 20, 21, and 22 of the indictment, the charging part, charging what oaths were false, what false statements, what number of men and animals, the fraudulently failing to impose fines and deductions for non-service. All those things are charged there, and as to all we expect to give evidence upon this route.

Mr. TOTTEN. May it please your honor, there is no place in this indictment where they have charged that anything wrong has been done in connection with this particular line of post-offices, except that they have said that there were unlawful petitions filed which were fraudulent; that they were signed by fictitious names fraudulently, and that the signatures to those papers were the signatures of people who did not live along the line.

The COURT. Refer to those portions of the indictment that you find fault with.

Mr. TOTTEN. Now, your honor, on page 60 the averment touching this particular route, and the charge is that these men—

In further pursuance of, and further to effect the object of their said unlawful, fraudulent, and malicious combination, confederacy, conspiracy, and agreement as aforesaid, did fraudulently make, write, sign, and cause and procure to be made, written, and signed, did fraudulently send, transmit, deliver, and cause and procure to be filed in the said office of the Second Assistant Postmaster-General, among the papers relating and pertaining to the said post route numbered 44155 a large number of false and fraudulent petitions, applications, and papers purporting to be the petitions and applications of persons residing upon and in the neighborhood of the said post route, to the said Postmaster-General, for an increased and additional service in carrying and transporting the said mails on and over the said post route, the said petitions, applications, and papers then and there being fraudulently signed with a large number of fictitious names, and the names of persons not residing upon and in the neighborhood of the said post route.

Mr. MERRICK. Read the last part of the indictment. There is another reference to this route.

Mr. TOTTEN. I know that. Now, it goes on afterwards, in the next paragraph, and says that on the 29th day of June, 1879,

The said Thomas J. Brady, did fraudulently make, sign, and file in the said office of the Second Assistant Postmaster-General a certain order in writing.

and that order is set out in these words :

increase service for four [4] trips per week, from July 14th, 1879, and allow contractors \$41,440 per annum additional pay, being pro rata.

BRADY.

I did cause the said unlawful and fraudulent order to be certified to the said Secretary of the Treasury for the Post-Office Department.

Then afterwards comes another order which is alleged to have taken place in the following April, 1880, whereby the service was reduced one week, and the amount of payment was cut down to \$10,360. I begin from the bottom of page 62. I began at page 61. "And afterwards, to wit, on the 16th day of July, eighteen hundred and eighty." An order was made for the payment and an allowance of payment for the service. And that is the end of the allegation touching this particular route. Now, they have conceded during the course of the trial to-day that those petitions were not fraudulent; that they were signed by people living along the route; that those people were

BLISS. [Interposing.] May I interrupt you, Mr. Totten? You are mistaken. There are two sets of petitions on this route. We have no admission as to the first set.

TOTTEN. Your honor knows what the gentlemen said about these petitions, and I will not repeat what they said. I understood the gentleman to abandon the idea that these petitions were fraudulent. They insinuate that there was one petition containing an interlineation made by somebody at some time.

BLISS. That is another jacket.

TOTTEN. Now, your honor, I say that the foundation of the charge, so far as it relates to this route, has been taken away; at all events, the testimony of the witnesses themselves shows that these petitions are genuine. So I say that they cannot go into the examination of all sorts of questions and on all sorts of papers and witnesses concerning what happened in 1878 along this road, or what happened at that time. If it is true that these petitions were reasonably correct, that is all that is necessary in the examination here. Your honor do not forget that during the course of this trial, and I do not think your honor has forgotten, that although a great deal of testimony has been permitted to go before the jury which we consider irrelevant and improper, still your honor has concluded that it was proper to find out the history of this business.

The charge here has been that there has been a corrupt agreement between two public officers and five other people engaged in all parts of the country in the business of transporting the public mails. Now there has not been one word of testimony upon that subject. These men have not been brought together. Their minds have not met, as the case shows to the jury so far, and there has not been one word, your honor, if I can understand testimony, to show that these men made any combination of any kind, that they had any connection, with the other, or that even the contractors had anything to do with each other, so far as the general business of the transporting of mail was concerned.

Now, to go back to 1878 and examine a driver in regard to the business of transporting mail on this route seems to me to be entirely irrelevant and improper. It is only lengthening out the business of this trial making us sit here all summer through the heat for no purpose but to bask in the sun, because your honor will be obliged to tell the jury, and

your honor would do it willingly, that unless they show a combination of minds among these defendants some time about the 23d of May, 1879, the verdict must be that of acquittal. That is the law, and that is the crime charged here. If these men are not guilty of an offense or unlawful combination there can be no conviction had. And furthermore, your honor, as I understood, and I presume I misunderstood the gentlemen, as I sometimes do, and perhaps always do, they do not undertake to assail the legality of this order, provided it was prudent—I use the language of my learned friend—to expedite this service. If it was necessary to carry the mails four times a week, then the compensation was not too large. But they undertake to show and to prove that it was not prudent; that it was not discreet; that no ordinary business man would pay so much money for that business; and that no ordinary man would undertake to carry the mails for such people that they do not have any right to receive their mails four times a week. If they undertake to show that we say that is not right. We say that does not show a combination to cheat the Government of the United States that it must be matter of corrupt agreement followed by the attempt to accomplish the object forbidden by the statute. Now, I submit that we have gone far enough in this kind of a loose connection of all sorts of papers dated in 1878, a long time prior, as to the allegation in the indictment as to conspiracy. I submit that you ought to require these gentlemen to say who has been corrupt, where has been the unlawful combination. Let us have some testimony on that subject, because your honor has declared the law to be, and your honor has declared it correctly, that so far as these public officers are concerned it is a question of corrupt motive. Now, General Brady may not be as smart as you or I, he might not know that \$3,000 was too much for carrying the mail over a certain route, whilst you and I might think it was only worth \$2,000. Still, if he did not do it corruptly; if he, being a weak man, was put in office by the powers that be, it is not at best a matter which can be alleged against him as a crime for which he can be punished by fine and imprisonment. I submit to the court it is time we shall settle the question here, whether we can go into this question of mail way up that country, about which nobody can know anything but the people who live there and whose testimony was before Brady when he made that order. I say it is time to stop and let us see whether anybody has combined with corrupt motive to swindle the United States.

Mr. CHANDLER. If the court please, I would like to make one suggestion more. I say that they have not subjected that order to the slightest criticism in this testimony, and it is a waste of time for them to undertake to build up a case on air alone in the absence of allegations. Now here in this case that I cited where they cite three or four authorities which hold the rule that where a deed was charged to be false and instruments charged to be false and the indictment did not set out wherein they were false, whether they were false in their statement of fact or whether they were forged, the indictment charged nothing. Now, if your honor please, that is all that this charge is. It is a general, vague, hollow charge that these petitions were fraudulent and the only way that this order is brought into criticism is by the imputation that it rests upon these so-called false petitions.

Now, is it possible that the country was in a certain condition, there was a certain amount of mail carried over that route, that certain parties had the contract had anything to do with the propriety of expediting that route if these petitions authorized the expedition, the gentlemen must be held to the logic of their own indictment, and they do not

undertake in this indictment to question the propriety of this order, because of the condition of the country. They only assail this order because they say that the petitions upon which the order was based were not true; that they were false. Now, we can see that if the petitions were true the order is justified. That is the logic of this indictment.

Mr. BLISS. Oh, no.

Mr. CHANDLER. Why, certainly it is. Why did you put it in? What is the meaning of it? What do you say? That they were false? Why do you say that they were false? You say they were false, and undertake to prove it, so that you can transmit the fraudulent petitions and the fraudulent character of the petitions to the order. That is why they are in here. Now, that is the only ground upon which this order is assailed in this indictment, and that ground has absolutely failed. There is not a color of truth in it. It is as destitute of any probability of truth as can be. It is so utterly so, that the gentlemen can see that the petitions are correct.

Mr. BLISS. No, sir. Is it necessary to contradict that again?

Mr. MERRICK. We have contradicted it a half dozen times.

Mr. CHANDLER. Now, then, after having put in these petitions, and put in all they could, and they having failed, then they turn their back upon the petitions and walk off in the vagaries of the concern upon matters that could by no possibility have been brought to the attention of the Second Assistant Postmaster-General. Those things that were brought to his official attention, and which the logic of this indictment shows that he was authorized to act upon if they were genuine, having turned out to be genuine and affording no ground for criticism of the order, they now say that they show the condition of the country; they will show who was subcontractor.

Now, why charge anything in this indictment? Why not have gone into these general facts? Why have given out any intimation at all what they were going to prove? Why do they state in one case that the oath was false, and in another case say nothing about the false oath? In one case that they expect to prove the oath was false, and in the other case they do not expect to prove it was false; why do they discriminate in that way? Why assail one order in one way in one case and another order another way in another case? Now, is it not true that where they specify their objections to the official conduct of a party the proof is limited to the objections which they recite in the indictment? Suppose you charge a man with stealing a horse. You need not say he is a white-faced horse, has white feet. Suppose you do say it, and cannot prove any other horse than the one you describe in the indictment. And when they descend to particulars in this case, as they have, and undertake to limit their assault upon this order to certain specified allegations, and those specified allegations turn out utterly without foundation is the proof a failure? It seems to me it is. How can they go on with incidents when the substance of the thing has utterly failed?

Mr. BLISS. Your honor—

The COURT. [Interposing.] I do not want to hear anything further. The objection that has just been urged by the learned counsel grows out of his failure to discriminate between an indictment for conspiracy and the charge for the commission of a subsequent offense.

Mr. CHANDLER. If your honor will permit me, in 7th Bissel they decide that proof which is relevant to establish conspiracy is precisely the proof which is relevant to establish a joint offense.

The COURT. All the books that I have ever seen upon the subject of criminal laws laid down the rule to be that a conspiracy was made out by proof of circumstances; each circumstance may be minute and of but little importance in itself, but if the circumstances are numerous enough and consistent enough, all bearing upon the fact of conspiracy, they may amount to proof of conspiracy. But if a man be charged himself, or two men, or more, with the commission of a certain act, then that particular act must be set out fully with its details and its dates and particulars specifically.

Now it is an offense to cheat the Government of the United States by a forged paper or false document or false affidavits, and if one of these parties or all of them had been indicted simply for committing a fraud upon the United States by means of certain false and forged papers, then it would be necessary to set out what papers they were, to describe them exactly, because there is a particular and distinct charge of a substantive crime. But here the charge is that these parties conspired among themselves to commit a fraud upon the United States, and that the means were various that they proposed to employ. Some of the means were by use of fraudulent petitions and applications to the Postmaster-General for additional service and increase of expenditure, and "upon each of the hereinbefore mentioned and described post-routes as aforesaid." That is one kind of fraudulent means which the indictment charges the conspiracy had in view. Now, I will concede, for the sake of the present occasion, that as regards the present route the petitions that have been given in evidence are not false and fraudulent petitions. On the contrary they seem to be genuine papers and genuine signatures. These petitions so far as they are concerned, do not sustain the charge. But the conspiracy is the main crime, and the conspiracy was entered into for the purpose not only of getting up false and fictitious papers, by which the Government was to be defrauded, but the indictment goes further and charges that the conspiracy contemplated the use of other means to defraud the United States; for example, that by means of said John W. Dorsey, John R. Miner, Stephen W. Dorsey, Harvey M. Vaile, and Montfort C. Rerdell, then and there did fraudulently make, and cause to be made as to the said post-route, false oaths and declarations, and fraudulently written declarations and statements, falsely purporting to be statements made and signed under oath, and so on, and then a great many other specifications. I will pass over a number of them and read this:

And by means of the said Thomas J. Brady, then and fraudulently, and for the benefit, gain, and profit of the said John W. Dorsey, John R. Miner, John M. Peck, Stephen W. Dorsey, Harvey M. Vaile, Montfort C. Rerdell, Thomas J. Brady, and William H. Turner, to make, sign, and file in the said office of the Second Assistant Postmaster-General written orders for increase and additional service on and over the said post-routes, and for the increase of the number of trips each week on and over each of the said post-routes to a number herein mentioned and specified in each of said contracts and agreements as aforesaid.

Now, there is a charge that this conspiracy had in view procuring false allowances from Brady, not by means of false petitions, but by any other means by which they could prevail upon Brady to make the allowances which they had never earned, and the means are not specified in regard to procuring these allowances from Brady. There is nothing of the kind specified in the indictment. So that if the conspiracy is to be made out by circumstances for this purpose, and it should be shown hereafter that Brady did make improper allowances from a corrupt motive and as a member of the conspiracy, then it seems to me that it will be made out, although all the petitions which have

then brought forward were genuine. The fictitious petitions were one of the means by which, as to some of the routes, the Government was imposed upon and defrauded of its money. Then the indictment goes on and specifies that there were other ways, other means. Then it concludes with the charge that these parties were in conspiracy with a view by which Brady, for his own profit and their profit and the common profit, was to make corruptly allowances for services which were never performed.

I think, therefore, that although as to this route these petitions seem to be genuine petitions, and the prosecution admits that they are genuine—as I understand it——

Mr. BLISS. [Interposing.] Your honor, the admission was confined to the petitions in a certain jacket, which is the jacket upon which the second order in this case was made, and was made after the time with reference to the time I examined this witness.

The COURT. But for the purposes of the present case, I proceed, the petitions seem to be genuine and not fictitious. Yet as the indictment is for a conspiracy, and the conspiracy is to defraud the Government by means of Brady, they may make out this conspiracy by circumstances, to be followed by proof, that Brady was a member of a conspiracy and made these allowances, although every petition that has been brought forward was genuine. The petitions were only one of the means for carrying out the fraud.

Mr. MERRICK. It will take some little time to examine this witness, Your honor.

The COURT. I adjourn more willingly now, because I have another case set for 3 o'clock.

Mr. WILSON. We will note an exception to the ruling on behalf of all defendants.

The COURT. Yes.

Whereupon (at the hour of 3 o'clock and 15 minutes p. m.) the court adjourned until to-morrow morning at 10 o'clock.

WEDNESDAY, JUNE 21, 1882.

The court met at 10 o'clock and 5 minutes a. m.

Present, counsel for the Government and for the defendants.

The examination of JOHN M. FISK was resumed, as follows:

By Mr. BLISS:

Question. When you commenced, on the 5th of September, 1878, how many trips were made per week?—Answer. Two.

Q. On what schedule of time?

Mr. HENKLE. I object to that question.

The COURT. Why?

Mr. HENKLE. The schedule will show what the time was?

The COURT. Oh, well, but he is asking him as to what was done, I suppose.

Mr. HENKLE. Go on. I except.

A. One hundred and twenty hours.

Q. What time did you leave Baker City?

The WITNESS. Do you mean in the morning?

Mr. BLISS. Yes.

Mr. HENKLE. What time do you inquire about?

Mr. BLISS. When he first commenced service.

Mr. TOTTEN. The 5th of September, 1878.

Q. What time did you, in fact, leave Baker City in the morning?

Mr. HENKLE. If the court please, I object to that question.

The COURT. I overrule the objection.

Mr. HENKLE. Permit me to state my point.

The COURT. Oh, no. I am not going to have it. This case is going to be endless anyway, and I cannot hear argument on such a question as that. I will take the risk of the decision. I cannot have argument about it.

Mr. HENKLE. But your honor cannot expect to cut us off without allowing us to state our position.

The COURT. Enter an exception.

Mr. HENKLE. Permit me to state the proposition. I do not propose to argue it.

The COURT. You object to the evidence.

Mr. HENKLE. I object, on the ground that the regulations provide that the postmasters at terminal points shall keep registers in which the arrivals and departures of mails are to be registered; that they have done so, and that the contractor and the Government are both adjudged by those registers made by the officers designated by law for that purpose, and that it is incompetent to introduce a witness to contradict the official registers.

The COURT. The question is not that. It is not a question altering in any respect the official register. I understand the question to be as to what time you left and what time you made.

Mr. HENKLE. Yes; and I asked him if he proposed to prove that he left on schedule time and he put the question without reference to schedule time. Now, as I say, the regulations provide for these schedules kept by the postmaster, and it is incompetent to contradict the schedule made by the officers of the Government by parole testimony.

The COURT. I do not understand that it is offered for that purpose or has that effect.

Mr. HENKLE. If the Government will state that it is not offered for that purpose it puts a different phase upon it.

The COURT. The question is not as to what is in the schedule. The question is what time he left and what time he took in performing the service.

Mr. HENKLE. He asked what time, in fact, he left. I say that is provided for by the regulations of the department.

The COURT. He might not have left on regulation time.

Mr. HENKLE. Then I object that it is not competent for the Government to show that he did not leave. The evidence as to the time of the arrivals and the departures of the mail is these registers that were officially kept under the regulations of the department, and the Government is bound by them and the defendants are bound by them. The defendants were fined if these registers showed that they were behind if they were too previous, or if they were too late they were fined and adjudged by these registers. Now, I say that it is not competent for the Government to show that these registers were fraudulent or false or untrue by this parole testimony.

Mr. TOTTEN. It is certainly incompetent as to the public official, your honor.

The COURT. The truth is I do not at present see the exact bearing

the question ; but there have been so many questions of that kind——

Mr. TOTTEN. [Interposing.] It can have no bearing unless it be to contradict these official registers. That is the sole purpose it can have in this case.

Mr. BLISS. Your honor, the gentleman is entirely mistaken as to the official registers. If the time is ninety-six hours, and if the mail arrives one hundred and twenty hours after starting, inasmuch as it is a bare day, and arrives at the hour of the day when it should arrive, though it arrives a day later, there is nothing upon the register that refers to that shows that fact. It simply shows that a mail arrived at a given hour in a day, which it did. In view of that, some time after a period—a full year afterward—there were temporarily placed upon the line and others what were known as mail bills, which did show on the precise mail left and when it got in. In these registers that referred to during that period that fact is not stated. Therefore, if the objection is that it was a contradiction of the record it would not hold.

The COURT. [To Mr. Bliss.] You can ask the question.

Mr. HENKLE. Your honor, I object that it does not tend to prove a conspiracy.

The COURT. Well, it is all the better for you if you have a good objection on the record.

Mr. HENKLE. But we do not want the jury prejudiced by incompetent testimony.

Mr. TOTTEN. I hope your honor will not look at it in that light.

Mr. HENKLE. We are not trying this case for the purpose of getting exceptions, your honor.

The COURT. I sometimes think you are. In the large range which an investigation necessarily must take, it appears to me that this question which merely goes to the actual time when the service was performed might have a bearing upon the issue in the case. That question does not profess to show that the schedule was erroneous, or changed, or altered, or affected in any way whatever. It is merely for the purpose of proving the fact as to the time when the service was performed.

Mr. HENKLE. Supposing that it be possible that by some manipulation the schedule might not show, although the postmasters were required by the regulations of the department to register the arrival and departure of each mail. By that register the contractors are adjudged in the department and are allowed or fined for the compliance with or the failure to comply with the contract.

The COURT. Oh, yes ; that is, if everything is honest and fair in the department ; but the charge is that it was not so.

Mr. HENKLE. Suppose it was not fair ; there has been no evidence of any conspiracy offered yet.

The COURT. Well ; but they say they are coming to that by and by.

Mr. HENKLE. Suppose, if the court please, that this man did not carry the mail on the time that the contract required that he should carry it ; that he started too late or arrived too late. How does that tend to establish the charge in this case ? As a preliminary fact, you would have to show that the contractor knew it.

The COURT. If this was a sham performance, and known to be a sham performance at the department by Brady and Turner, it is competent evidence.

Mr. HENKLE. Undoubtedly.

The COURT. Whether it has that effect or not I cannot tell; but is offered for that purpose.

Mr. HENKLE. But there must be some limit to this. I know you may prove a conspiracy by isolated facts, but these facts must all look to a common purpose and tending to a common purpose on a common center. How does the fact that is proposed to be proved by this witness on the stand tend to show a conspiracy? They propose to show by this witness that he did not start at the time that the schedule required him to start, or that he did not arrive on time.

Mr. BLISS. How do you know?

Mr. HENKLE. How does that tend to show that Brady at this end of the line knew that this driver was not complying with the regulations?

The COURT. I can tell you that.

Mr. BLISS. Judge Henkle is not representing Mr. Brady, I think.

Mr. HENKLE. I am representing Mr. Miner, who is interested in this question, and who is charged here with a conspiracy. If Mr. Miner was on trial upon an indictment for defrauding the Government by not complying with the contract as to the arrival and departure of the mail on this route it would be quite a different question. That is not the question here. He is upon trial on an indictment for conspiring to defraud the Government by a combination with the Second Assistant Postmaster-General. Now, I say before such testimony can be introduced as tending to prove the crime charged in the indictment, the foundation must be laid for it. We are not trying the question whether Miner committed a fraud upon the Government, whether he did or not, whether he ran the mail on time or not, but whether he combined with Brady to defraud the Government by obtaining from the Government money that he ought not to have had. That is the question. Now I say that before you can introduce this fact as tending to establish the offense charged in the indictment you must first lay the foundation by establishing some sort of a combination or conspiracy; and as yet there has not been a shadow nor a pretense of a shadow of proof to bring these parties together in combination for this purpose.

Mr. BLISS. That assertion is repeated constantly.

The COURT. It is proposed to prove that the Government was defrauded by Miner, the contractor, on that route. Miner is charged as a coconspirator with the other defendants, for the purpose of defrauding the Government by this as well as other kinds of management.

Mr. HENKLE. No, sir; not by this kind of management. He is not charged with that in the indictment.

The COURT. It is certainly competent evidence for the purpose of establishing the fraud on the part of Miner; and Miner is charged as a co-conspirator and the frauds in these contracts are charged in the indictment to have been frauds committed for the common benefit and with the knowledge of all the defendants, and in the profits of which all the defendants shared. If this is competent evidence to prove fraud in Miner under this indictment it is competent as to the whole at this stage of the case. Whether the conspiracy will be made out finally is another question. If there should be a failure in the end to bring these parties together into a common confederacy, of course all the frauds committed individually would have to pass for nothing, because those frauds would simply be the subject for individual indictment. But we must allow a good deal of latitude in the introduction of this testimony.

Mr. HENKLE. I know; but this is a criminal case, and too much latitude ought not to be allowed simply because the charge is conspiracy.

The COURT. Conspiracies, as I have had occasion to frequently remark at this trial, cannot be proved directly because they are generally formed in secret, and the public can only reach information in regard to the conspiracy by the acts of the parties themselves and from circumstances leading or pointing in that direction. And if those acts and circumstances in the end should be sufficient to satisfy the jury that there was a combination, that is enough.

Mr. HENKLE. I do not object to that principle, your honor. I think your honor is perfectly right about it, and that it would be a very difficult thing to prove; probably the actual convention of the parties and an agreement by which they entered into the conspiracy could never be proved. So that from necessity you must prove conspiracy by the individual acts of the parties. But those acts, before the parties are brought together, must be acts that tend to a common purpose and that look to the accomplishment of a common purpose. There must be something that looks to a combination.

The COURT. Suppose it should be shown hereafter that the Second Assistant Postmaster-General had a full knowledge of these facts and of a fraud on the part of Miner, as charged, and approved it and took part for it.

Mr. INGERSOLL. That would be a good case.

Mr. HENKLE. That would make it good, except that it would not be proper in the order of time and that it is not provided for by the indictment.

The COURT. I do not know whether such a case as that could be made out.

Mr. HENKLE. We have to rely upon the Government, and your honor has to rely upon the Government, and I ask if they expect to show at any stage of this case that Brady ever knew that this driver in delivering that mail did not arrive or depart on schedule time.

Mr. INGERSOLL. It is a good case if they can prove that he knew.

Mr. HENKLE. It is for them to say if they expect to connect him with this matter.

The COURT. I think I have decided this question.

Mr. HENKLE. We will reserve an exception.

Mr. TOTTEN. Will your honor remember that this proof goes to a date nearly a year prior to the alleged conspiracy.

The COURT. I have passed upon that question.

Mr. TOTTEN. Your honor said if this fact were proven, and it were proven that we knew it it would be good evidence. I say it would not. I do not concede that. There is no pretense here that we knew anything about it.

Mr. INGERSOLL. If they can prove that this was done with the connivance of Brady, and that money was paid it is a pretty bad case.

The COURT. The conspiracy must be brought within the three years.

Mr. TOTTEN. Then everything prior to the 20th of May, 1879, ought to be excluded.

The COURT. No, sir.

Mr. TOTTEN. Then the statute does not exclude it.

The COURT. It has been often decided that it is competent to prove a pre-existing combination among certain parties, and that the conspiracy was carried to a recent period, and that new parties joined it from time to time. But for the purpose of getting at the whole facts and the nature of the conspiracy, the prosecution is permitted to go behind the period of limitation for the purpose of building up the conspiracy if it

was joined in and carried out in the period of limitation provided by this statute.

Mr. TOTTEN. There is no such case as that here, your honor.

The COURT. I do not confine myself to the case as it is here.

Mr. WILSON. If your honor will pardon me, I will make one remark in this connection. This testimony is certainly being introduced in its natural order. I recognize, as I have said once or twice before, it is within the discretion of the court as to the order in which the testimony shall be permitted to be introduced, but it has been said well said, by the court, that unless it is shown that Brady knew these things, and that he connived at them and divided the proceeds, the testimony does not go for anything as to him.

The COURT. Still there may be a conspiracy between the others and him left out. If the proof should fail to bring Brady into the conspiracy, still a conspiracy may possibly be made out in which the others were concerned.

Mr. HENKLE. That could not be the conspiracy of the indictment.

The COURT. Perhaps not. No; I see that Brady is the key of the indictment.

Mr. WILSON. Let us, for the purpose of the present question, concede that it is so, which, of course, I do not concede under the facts of the indictment. The point I want to get at is this: Here is Brady in the city of Washington. This route is two thousand miles away, or three thousand miles away. The regulations require the postmaster at the terminal points to send in these registers showing the departures and the arrivals. Every time that the postmaster reports to the Second Assistant or to the Post-Office Department a non-departure on schedule time or a non-arrival on schedule time, the Post-Office Department fines these people for their failure to comply with the contract.

Mr. INGERSOLL. In the inspection bureau.

Mr. WILSON. In the inspection division. Here in the Post-Office Department are the registers of the arrivals and the departures, here is the record of the fines and deductions that were made on these contractors, exactly in pursuance with the official records that come to that department. Now, if this testimony is to go in in order, out of order in one sense, it does seem to me that these facts ought to be given to the jury, in order that they may know exactly what General Brady has been doing in regard to this matter.

The COURT. That is what I understand they propose to do.

Mr. WILSON. I understand they do not propose to do it. If they are going to examine this witness, and your honor has said they may examine this subject, they ought to produce here this record so that the jury, in connection with the testimony of the witness, may know exactly what General Brady has done, and upon what he did it.

The COURT. Probably they will.

Mr. WILSON. I will ask the gentleman to produce it.

The COURT. We can only prove one thing at a time.

Mr. WILSON. But there is no more apt time to do a thing of this kind than right now.

Mr. BLISS. They are asking us to prove their case.

The COURT. It appears to me that the natural order of proof where there is a conspiracy to commit a fraud upon the Government is to prove the fraud, and then show in what way the others were concealed in that fraud.

Mr. HENKLE. That is not the fraud that is charged.

The COURT. They propose to prove the time and the amount of the

that was performed upon that route; and in fact, as I understand that the service performed was not the service called for by the contract; that is, that it was a fraud upon the Government committed by Miner. Whether the others were participants in that fraud must be determined afterwards in the natural order of things, because you cannot have a combination from the subsequent approval of the conspirators without proving the fraud first.

Mr. CHANDLER. Allow me to make this suggestion—

The COURT. [Interposing and with emphasis.] I cannot, and I will not hear any more argument upon this matter. I have decided it, and I will not hear another syllable. I will lay that rule down.

Mr. CHANDLER. I simply wanted to call your honor's attention to the fact that the indictment does not allege any such grounds.

The COURT. I have decided this question three or four times, and I will not waste any further time upon this argument. You have your remedy elsewhere. I am satisfied the decision is right, and it is impossible to shake me in that decision.

Mr. TOTTEN. We wish an exception noted for all the parties.

Q. What time did you leave Baker City?—A. Between 6 and 7 o'clock.

Q. In the morning?—A. Yes, sir.

Q. How far did you go?—A. I went that day to Granite Creek.

Q. You are speaking now of your first trip?—A. Yes, sir.

Q. How far was that?—A. It was called forty-two miles.

Q. Did you lay over there?—A. Yes, sir.

Q. After that, did you go on or did you go back?—A. The next morning I went on to Canyon City.

Q. How far was that?—A. Fifty-five miles.

Q. Did you go beyond Canyon City?—A. I did.

Q. Where?—A. I went to South Fork the next day.

Q. How far was that?—A. That was thirty-four or thirty-five miles.

Q. Did you lay over there?—A. No, sir; I went there and went back to Canyon the same day.

Mr. HENKLE. Does he mean that that day's journey to Canyon and beyond was—

Mr. BLISS. [Interposing.] He went from Canyon to the Fork and back in the same day, making seventy miles.

The WITNESS. Yes, sir.

Q. And from Canyon where?—A. Back to Granite Creek.

Q. Did you lay over there?—A. Yes, sir.

Q. And so to Baker City?—A. To Baker City.

Q. Did you perform the service in that way, after that time?—A. Yes, sir.

Q. For how long a time?—A. Four months and a half, probably; about that.

Q. Were the trips increased beyond two at any time?—A. Yes, sir.

Q. When was that?—A. I think it was the 15th of November.

Q. Of what year?—A. Eighteen hundred and seventy-eight, my recollection is.

Q. Did you drive anywhere else upon that route than where you have described?—A. No, sir.

Q. During the time you were there, did they drive at night at all?—A. No, sir.

Q. Was the number ever made more than three trips a week?—A. No, sir.

Q. Do you know when that was?—A. It was some time in 1879 July, I think, when they started.

Q. [Submitting a letter.] Please look at that letter and see if you ever received it.—A. Yes, sir.

The COURT. Have you a diagram of this route?

Mr. BLISS. No, sir. It will be here at recess. On account of the commencement of the new service on the 1st of July, the topographer has been so busy that he has not had time to prepare them all.

Q. In starting from Baker City, what was the first post-office?—A. Auburn.

Q. How far was that from Baker City?—A. Twelve miles.

Q. Did you have a separate pouch for Auburn?—A. There was only one trip when there was one pouch.

Q. You never had a separate pouch for Auburn, except on that one trip?—A. I drove that one trip when there was a separate pouch. After that I never knew anything about it. I didn't drive there any more.

Q. When was that one trip you spoke of?—A. That was in January.

Q. What year?—A. In 1879, a few days after New Years.

Q. On that trip you say you drove out to Auburn, and where did you go from Auburn?—A. On to Granite Creek.

Q. And where from there?—A. On to Canyon City.

Q. And from there?—A. Back to Granite Creek. Then it was three trips per week.

Q. Now, on that trip, did you take back to Baker City a through pouch?

Mr. WILSON. I object to the question. It is just as leading as it can be.

Q. Well, what pouches did you take back from that trip to Baker City?—A. I took in two pouches from Auburn.

Q. Anything from beyond?—A. I had one sack when I arrived Auburn.

Q. Where did you get that sack?—A. I got that at Canyon City.

Q. Where did it come from at Canyon City?—A. From the postmaster, at the post-office.

Q. Was it made up in Canyon City?—A. To the best of my knowledge, it was.

Q. Did you meet the carrier at Canyon City coming from The Dalles on that trip?—A. Yes, sir; I met the carrier.

Mr. BLISS. [Referring to a letter identified by the witness.] I propose to offer this letter.

Mr. HINE. We object to the reading of that letter in evidence.

Mr. BLISS. It is a letter signed by—

Mr. INGERSOLL. [Interposing.] Just let the court see it.

Mr. BLISS. I am not going to state the contents of the letter. It is a letter signed by the party whom this witness has testified was the superintendent of the line, the representative of the contractor, and from whom he received all his instructions, and it is an instruction to him as to the mode of performing the service.

The COURT. Has his authority been established by evidence?

Mr. BLISS. Simply in this sense: That receiving instructions from this man for performing the service he was paid for performing the service.

The COURT. You have not proved that.

Mr. BLISS. Yes, sir; he swore to it.

The COURT. I had not observed that.

Mr. BLISS. Yes, sir; that is the case.

The COURT. Very well; you may read it.

Mr. HENKLE. If the court please, this is the declaration of a stranger, Mr. Williamson, and is not connected with this conspiracy at all; and how a letter written by him to this driver can be offered in evidence against any of these parties is a mystery to me unless you first show the authority for Mr. Williamson to write this letter. Now, the doctrine *qui facit per alium facit per se*, does not apply in criminal cases unless you establish the fact. I mean that it is not inferred that because a man does a thing and he is authorized to do it, that it is criminal. You cannot infer that an agent has a right to do a criminal thing, as you may in civil cases infer authority from the ratification of the act, or from the act being done in the line of authority. There is no such doctrine as that known in criminal law. The highest degree of evidence known to the law is required to establish a crime, and you cannot infer that because a man who was an agent of a party for one purpose does a thing that is criminal he was authorized by his employer to do that criminal thing. That would be a monstrosity in criminal jurisprudence.

Now, there is not the slightest foundation in the world laid for the introduction of this evidence. Here is a man who writes a letter, who was an entire stranger to this indictment and to this proceeding, and to all of these parties so far as your honor knows. There is not a scintilla of evidence connecting him with the case upon trial or with any one of the defendants as yet. And yet it is proposed to give this in evidence to the jury in a criminal case where the highest degree of evidence known to the law is required. I read from Roscoe's Criminal Evidence:

The existence of a conspiracy is a *fact*, and the declaration of a stranger is but hearsay, unsanctioned by either of the two great tests of truth. The mere assertion of a stranger that a conspiracy existed amongst others to which he was not a party would clearly be inadmissible; and although the person making the assertion confessed that he was a party to it, this, on principle fully established, would not make the assertion evidence of the fact against strangers.

Mr. BLISS. I do not offer this letter to prove any criminal act on the part of the signer of the letter. I offer it to prove directions by Mr. Williamson, who was the party who had always given the directions to this gentleman, who had employed him, and through whom he was paid; that the direction which he gave him was to perform his service in a particular manner, which is not the act; while the thing he directed him to do is a violation of the contract, it is not in itself any criminal act at all.

The COURT. Let me see the paper. [Mr. Bliss submitted the paper to the court, and the same was perused by the court.] Mr. Bliss, I do not see how that can be evidence against Mr. Miner.

Mr. BLISS. It certainly is not evidence, unless Mr. Williamson was his agent.

The COURT. Mr. Williamson was his agent to see that the mail was carried over the route, and if the agent disobeyed the authority of his principal, his disobedience is not to be charged against the principal.

Mr. BLISS. Well, sir, I do not care to persist in it.

The COURT. I think it is not evidence, unless you can show it was authorized by Miner.

By Mr. BLISS:

Q. [Resuming.] During the time that they were running two trips a

week, how many drivers and horses were employed, do you know?—
I only know so far as South Forks is concerned.

Q. From South Forks to Baker City, how many drivers and horses were employed?—A. There were two drivers.

Q. And how many horses?—A. Fourteen horses.

Q. That was on what schedule of time?—A. One hundred and twenty hours.

Q. How long did that schedule running one hundred and twenty hours continue; you said to July, did you not?

Mr. HINE. I object to that question.

The COURT. The objection is overruled. You may go on, Mr. Bliss.

Q. Did they ever, at any time, commence to run in less than one hundred and twenty hours; and, if so, at what time?

Mr. HINE. I object to that question.

The COURT. The objection is overruled.

A. They commenced late in the fall of 1879.

Q. Now, prior to that time were the number of drivers and horses between Baker City and South Forks increased from the number you have just stated?

The WITNESS. I will have to explain a little.

Mr. HINE. I object to that question.

Mr. BLISS. Go on.

A. When we run to South Forks it was two trips per week. Then when one more trip was added Canyon City was the end of our route.

Q. After it became three trips per week—

Mr. HENKLE. [Interposing.] When did you say it became three trips a week?

The WITNESS. The 15th of November, 1878.

By Mr. BLISS:

Q. [Resuming.] When there became three trips a week, was there any increase of men and horses upon the distance between Baker City and Canyon City prior to the time of their commencing to run on a reduced schedule?—A. No, sir.

Q. After they commenced to run on the reduced schedule, what was that time?

Mr. HINE. I object to the question.

A. I was not there; I was not working for them.

Q. So that you do not know as to that portion?—A. No, sir.

Q. How was the mail carried, on horseback, or how?—A. On buck-boards.

Q. One or two horse buck-boards?—A. Two-horse.

Q. Over that portion which you went, what was the average amount of the mail?

Mr. TOTTEN. That is objected to because it is unimportant and immaterial.

The COURT. You may prove it.

Mr. TOTTEN. Give us an exception.

A. It varied. In one way there was very little, and the other way there was no great carriage.

Q. Take the direction from Baker City to Canyon City?—A. I think the largest mail I ever took was about two hundred pounds.

Q. What was the smallest you ever took from Baker City to Canyon City?—A. I think probably forty pounds, or thirty pounds; along there; I never weighed it.

Q. What was the ordinary average weight of the mail?—A. I judge it would average about ninety pounds, to put it on an average.

Q. What were they; letters, or papers, or what; or don't you know?

Mr. TOTTEN. How can he know that.

The COURT. That is not important.

A. I could not state what it was; I did not have any key.

Q. Did you carry this mail that you took from Baker City all the way through to Canyon City, or leave some of it on the way; were there stations on the way.

The WITNESS. Post-offices?

Mr. BLISS. Yes; post-offices.

A. They were distributed to post-offices as I went along the route.

Q. How large a proportion of the mail with which you started from Baker City did you carry to Canyon City?—A. That varied; sometimes the most of the mail was for other points between Canyon City and Baker, and sometimes most of the mail went to Canyon City, so that that is very hard to get at.

Q. Did you have any pouch leaving Baker City, which was for any point beyond Canyon City, or was all your matter put into a pouch for Canyon City?—A. All my matter was put into a pouch for Canyon City.

Q. Now, going the other way, what was the amount of the mail from Canyon City to Baker?

Mr. INGERSOLL. I object, if the court please.

The COURT. If the first was evidence this is.

Mr. INGERSOLL. I admit that. I only do not admit that the first was evidence.

The COURT. You cannot expect me to turn around so suddenly as that.

A. I suppose from ten to twenty pounds.

Q. [Resuming.] The mail, therefore, going from Canyon to Baker was a good deal less than the mail going from Baker to Canyon?—A. Yes, sir.

Q. You mean that the whole mail was from ten to twenty pounds?—

A. Yes, sir.

Q. Did you at any time return to Baker without having connected with the carrier who brought the mail from some point to the westward of that?

Mr. HINE. I object to that question.

The COURT. How is that competent evidence. These parties are not responsible for his dereliction of duty unless he was ordered.

Mr. BLISS. Well, sir, I will not press it. [To counsel for the defense.] He is your witness.

CROSS-EXAMINATION.

By Mr. HINE:

Q. Will you kindly tell us when you commenced carrying the mail over that route?—A. I think I left Baker City with the mail on the 9th of September.

Q. Of what year?—A. Eighteen hundred and seventy-eight.

Q. And you have no knowledge of anything that occurred prior to the time that you commenced carrying the mail; no personal knowledge, have you?—A. No, sir.

Q. Well, now, how long did you continue to carry the mail?—A. I continued to carry it till the 15th day of April, 1879.

Q. At first you carried the mail from Baker City to South Forks?—

A. Yes, sir.

And that is how far from Canyon City?—A.

Y-five some call it. I call it thirty-four.

Now, at Baker City there was another route that went by a mile road north, and sometimes you took the through mail that reached Baker City, did you not; you sometimes carried the mail from Baker City to Canyon that went up through The Dalles?—A. I suppose it was what was called a through sack.

Q. That very often occurred, did it not?—A. Yes, sir.

Q. Then the mail would be several hundred pounds from Baker City would it not?—A. Sometimes it would and sometimes it would not.

Q. Sometimes it would accumulate at Baker City, not being taken over by other routes, and then they would make you take it over this route?—A. Certainly; whatever was accumulated that was to go to Canyon City.

Q. You did your part faithfully?—A. Yes, sir.

Q. And you were a faithful carrier according to the schedule time as you understood it from the postmaster, were you not?—A. I did to the best of my ability.

Q. And you say that this company furnished that route with fourteen horses?—A. Yes, sir.

Mr. BLISS. Of what company are you speaking?

Mr. HINE. He spoke of a company.

Mr. BLISS. What company do you mean?

Mr. HINE. The contractors. He spoke of a company in his direct examination, and that is the reason I said it.

Q. [Resuming.] At that time when you were furnished horses you went about how many miles north or northeast from Canyon City?—A. About thirty-four miles.

Mr. BLISS. Northeast.

Mr. HINE. It is nearer north.

The WITNESS. It is more west.

Mr. HINE. I mean west. I am looking at the map; I see it is west of north.

Q. [Resuming.] In that country there was a good deal of excitement about mines a few years ago, was there not? You say you have resided there about fifteen years?—A. Yes, sir.

Q. There were some twelve or fifteen different mining districts established by the Government north of Canyon City and northwest of Canyon City and northeast of Canyon City?—A. I could not answer that they were established by the Government, for I know nothing of that.

Q. Well, they were called mining districts, were they not?—A. Yes, sir.

Q. Canyon City had at that time three or four thousand people, did it not?—A. No, sir.

Q. How many?—A. The population was about four hundred.

Q. I was thinking about The Dalles. It was the distributing point for that region of country west, northwest, and northeast?—A. Yes, sir.

Q. There was a mail route running from Canyon City southwest also, that went down to the Union Pacific Railroad, was there not?—A. South is what we term it there.

Q. It carries off to the west considerably, and the mail frequently was distributed there at Canyon City for that route, was it not; and

you carried that mail ?—A. I could not say as to where it was distributed to go.

Q. You never had any key to the mail-pouches ?—A. No, sir; and therefore I could not say where it was to go.

Q. So you do not know whether the mail was letters or papers or public documents ?—A. No, sir.

Q. Well, frequently you took out of Baker City four or five hundred pounds of mail ?—A. No, sir.

Q. Did you always carry the mail with horses ?—A. Yes, sir.

Q. Why could you not carry it with one; was it more convenient to carry it with two, or was it because they furnished you with two horses ?—A. They furnished me with two horses.

Q. You had no personal acquaintance, I presume, with either Mr. Miner or Mr. Vaile ?—A. No, sir.

Q. The postmasters gave you general directions, I presume, what to do with reference to carrying the mail over each line, did they ?—A. No, sir.

Q. You simply attempted to go upon schedule time as nearly as possible, did you ?—A. Yes, sir. There was only a schedule to be kept at one end of my route.

Mr. MERRICK. Which end was that ?

The WITNESS. Baker City.

Q. [Resuming.] You spoke of going to Canyon and then returning, and not going to the place north at which you had before gone. Did you meet a carrier at Canyon ?—A. Yes, sir.

Q. And took his mail back to Baker City ?—A. Yes, sir.

Q. Now, Mr. Fisk, allow me to ask if you ever took the same mail-pouch back to Baker City that you took out from Baker City ?—A. That is a question that I could not answer; but I am under the impression that I have taken it nearly every trip, for the simple reason that generally a sack runs from these offices backwards and forwards.

Q. After it had been emptied and filled. But did you ever take a mail-pouch out from Baker City and bring it back without depositing it with the postmaster to whom it belonged, and he emptying it as far as you know and supplying it with other matter ?—A. I did not.

Mr. HINE. That will do as far as I am concerned.

By Mr. WILSON :

Q. Do you know Mr. William H. Turner ?—A. I do not. He has been pointed out to me since I have been here.

Q. How many times did you ride over that road with him ?—A. He never went over it with me.

Q. You know General Brady, too, do you not ?—A. He has been shown to me here.

Q. Did he ever ride on that buck-board with you over that road ?—A. Not to my knowledge.

Mr. INGERSOLL. I just want to ask the witness one question about Dorsey.

By Mr. INGERSOLL :

Q. Were you employed by S. W. Dorsey or J. W. Dorsey, so far as you know, in carrying the mails ?—A. I never knew of their names at all.

Q. You were not in their employ, as you understood ?—A. Not as I understood it.

REDIRECT EXAMINATION.

By Mr. BLISS :

Q. You said that on only one end of your route there was a schedule. You mean at that end of the route there was a time for arrival?—A. And for departure, as far as I was informed by the postmaster.

Q. When you said you traveled on schedule time, did you mean to say that before the fall of 1879 you traveled on a time of less than one hundred and twenty hours?—A. No, sir.

Q. You said that Canyon City was a place of about four hundred inhabitants?—A. Yes, sir.

Q. What is the post-office next east of Canyon City?—A. Prairie City.

Q. How large a place is it?—A. It has about four hundred inhabitants.

Q. What is the post-office next east of that?—A. Sumpter.

Q. What is the population of that?—A. Well, I do not know; it is very few; probably twenty-five or thirty.

Q. What is the post-office next east of that?—A. Auburn.

Q. What is the population of that?—A. I could not say exactly.

Q. Is it one hundred or one thousand?—A. I think it is in the neighborhood of one hundred.

Q. And there is no post-office between Auburn to Baker, I think you said?—A. No, sir; there is none.

RECROSS-EXAMINATION.

By Mr. HINE :

Q. Will you state to the court and jury what kind of a road it is between Baker City and Canyon City?—A. It is a very mountainous road.

Q. A pretty difficult road to travel, is it?—A. It is.

Q. How is it in the winter, as to snow storms and blizzards and all that?—A. Well it is a fearful road in the winter time; terrible.

Q. It is a serious undertaking to travel that road during the winter time, is it?—A. Yes, sir.

Mr. INGERSOLL. And a man needs an undertaker after he has done it.

Q. [Continuing.] You have streams to cross, and the bridges are often taken away, are they?—A. I do not remember of the bridges being gone very often; I never knew of them being gone at all. There are not many streams.

Q. You know nothing about the character of the mail personally, I presume, from Canyon City to The Dalles, excepting the short time between Canyon City and the place you spoke about?—A. Yes, sir.

Q. That is all you know about it?—A. That is all I know about it.

JOSEPH E. MASTERSON sworn and examined.

By Mr. BLISS :

Question. Where do you live?—Answer. Canyon City.

Q. How long have you lived there?—A. Between four and five years.

Q. Have you ever had anything to do with the mail on the route from The Dalles to Baker City?—A. I carried the mail between The Dalles and Canyon City.

Q. When did you commence carrying it?—A. I commenced when I commenced three times a week.

Q. When was that?—A. The 18th day of November, I think.

Q. What year?—A. Eighteen hundred and seventy-eight.

Q. How far did you drive?—A. I drove two hundred miles.

Q. You drove from The Dalles to where?—A. To Canyon City.

Q. That is two hundred miles?—A. Some call it two hundred, and some call it one hundred and ninety.

Q. How long did it take you to go that two hundred miles?—A. It took me three days.

Q. Did you travel nights?—A. No, sir; only when I could not get in in day time.

Q. How long did you drive there?—A. I drove there until some time in July, 1879.

Q. Then you quit?—A. That was when they put on the seven trips a week.

Q. Then what did you do?—A. I drove from The Dalles to Cross Hollows, fifty-eight miles.

The COURT. I would like now to be informed what you propose to prove.

Mr. BLISS. I am proving now the falsity of the oath upon this route as to the number of men and horses used.

Mr. TOTTEN. There are no false oaths in our case.

Mr. BLISS. I am going to prove also that they did not go on the expedited schedule.

Mr. INGERSOLL. I want to say just one word to see if I am right about this. Now, when we came to prepare our defense to the indictment, we certainly had the right to prepare to defend what is in the indictment, and no more. Nineteen routes are set forth in this indictment. In several of the routes it is charged that a false oath was made as to the number of men and animals employed to carry the mail on the original schedule, and the number set forth that would be necessary to carry it upon the increase of service and expedition of the schedule. Now, as to those routes where the affidavit is set forth, or it may be where the charge is made specifically upon the route that an affidavit was false, straining the doctrine to its utmost limit, we would be bound to prepare for our defense. But when they come to a route where they set forth that the petition and application were fraudulent and signed by fictitious persons, and make no point as to the men and animals—no point as to the affidavit the contractor made—I submit to your honor whether or not we were under the slightest legal obligation to ascertain what had been done on that route so far as the horses and men were concerned. Were we under such a charge; were we under any obligation to prepare our defense as to an affidavit touching the number of men and animals? Now, in this particular route, I say to the court that no charge is made that the affidavit of the contractor or subcontractor was false. There is no charge that the men and animals set forth in the affidavit were not necessary. There is no charge that the number set forth were not used. Now, that being the case, we were under no legal obligation to prepare our defense upon that point; and whatever way the court answers that question of course decides this point. If we were under no obligation to prepare our defense upon that point, then they have no right to introduce any testimony in support of a charge that they never have made, and if it is good without a charge, then of course we will be under obligation to make our defense. But why should they not be held to this indictment? They charge that on

it. It is not set forth in the indictment. No charge is in the indictment that any affidavit was made upon this route, and that reason I never examined it, and I state to the court that I made the slightest preparation for any defense upon that point, but I never dreamed of any being made. As the indictment is entirely silent, I supposed that nothing would be urged upon that point.

Mr. MERRICK. Your honor decided this point yesterday after the very objection, quoting from the indictment. I find your opinion at page 716 of the record, covering the whole ground.

Mr. INGERSOLL. I do not understand that the court decided it.

Mr. MERRICK. The court decided the identical question whether referred to the charge in the indictment.

Mr. HENKLE. If the court please, just one moment.

Mr. BLISS. [Interposing.] The charge here is conspiracy to charge them with a conspiracy, and we allege that in connection with the conspiracy they made certain false and fraudulent oaths and declarations. That was part of their scheme. When we come to overt acts, we charge specific overt acts on different routes. We charge as an overt act on this route the false and fraudulent oaths we do set out in the charging part of the indictment, distinctly, on 16, that one of the means for carrying out the conspiracy was false and fraudulent oaths and false and fraudulent declarations:

And fraudulent written declarations and statements, falsely purporting to be statements made and signed under oath, the said oaths and declarations then and falsely and fraudulently to state and describe the number of men and animals required to perform the service of carrying the said mail on and over each of said post

And your honor said yesterday:

Now, there is a charge that this conspiracy had in view procuring false allowances from Brady, not by means of false petitions, but by any other means by which could prevail upon Brady to make the allowances which they had never earned, and means are not specified in regard to procuring these allowances from Brady. It is nothing of the kind specified in the indictment. So that if the conspiracy was made out by circumstances for this purpose, and it should be shown hereafter that Brady did make improper allowances from a corrupt motive and as a member of the conspiracy, then it seems to me that the charge will be made out, although all

le that a wholesale charge like that is to be made. If it is, all they need to put in this indictment is, "We claim you were guilty of conspiracy," and that notice would have been just as perfect as this. Now, we made a false oath, what oath? I admit that in the charging part of this conspiracy they can set forth that we made false oaths; that we made false and fraudulent petitions; but when they come to the next part, to tell what we really did, then they must set out that oath; and if they do set out any oaths as having been made that were false, I say they are precluded from proving the falsity of any other oaths. They must stand by the charge as they have it in the indictment. And why? So that the defense may have been notified of the charge and had the opportunity to prepare a defense. It is the first principle in all criminal pleadings, so far as I know, that an indictment must tell the defendant what is charged against him, and it must do it with that particularity that he must know absolutely with what he is charged. Now, in this case, if the court please, we are charged with making false affidavits on certain routes, and we come to this route number. It is a route specifically stated. Will the gentlemen now pretend that they have the right to drag in routes not mentioned in this indictment? They have mentioned nineteen routes. Can they go outside and prove what was done in other routes? Certainly not. And why? Because the defendants not having been notified we had no opportunity to prepare their defense. Now, if they cannot go into other routes, can they go into affidavits not set forth? They have set forth affidavits. When they come to this route there is not one word about the falsity of any affidavit; not one word that any affidavit was ever made in that route. Now, I submit to the court, could we, under that charge, have prepared ourselves to defend against any charge on any evidence that might be brought about an affidavit? The only charge is that we put in false petitions, false applications. That is the only charge.

Now, I submit to the court, under that charge was it my duty as the attorney of the defendants to prepare their defense as to any affidavits that might have been made? Now, there ought to be some limit somewhere. There must be something that will define our rights. There must be something to notify the defendants what they must have in court; the witnesses they must have; and we ought to know exactly what we are called upon to answer, and it seems to me in this case, as this affidavit has not been set forth, and as there is no claim in this indictment that a false affidavit was made on this route, that they should be confined to the charge they have made as against this route.

Now, going back in this indictment, for instance, the charge is that we made false claims. Now, what false claims? They have said false claims. They have set forth that we drew certain moneys; would the court allow them to come in and prove that we drew other sums of money on other routes at other times? Certainly not. Why? Because the indictment advertises to us that we are charged, and we are supposed to be here in court ready to meet the charges in the indictment, and we are not supposed to be ready to meet any other charge on earth, no matter how innocent we may be.

Now, all that we ask the court is to hold these gentlemen to the law. They have had plenty of time. They have had plenty of assistance. And if their indictment is not broad enough, if their indictment does not cover the case, it is certainly not the fault of the court, and it certainly is not the fault of the defendants. I want them held simply to

the rules of law, and I ask the court again, and I submit that to your honor, were we bound to be ready to defend any charge not specifically made in this indictment as to this particular route?

They propose now to show something about the affidavit made by Mr. Peck. Mr. Peck is not a defendant in this case. But I throw that all out—that he is dead, the fact that they have not shown anything between us. That I care nothing about now. The point is simply, under that indictment have they the right to prove anything about the affidavit? And the court will see just exactly what the charge is in this route at page 61 of the indictment, and that is simply about the conditions. Not another word.

The court said yesterday:

All the books that I have seen upon the subject of criminal laws laid down the rule to be that a conspiracy was made out by proof of circumstances; each circumstance may be minute and of but little importance in itself, but if the circumstances are numerous enough and consistent enough, all bearing upon the fact of conspiracy, they may amount to proof of conspiracy. But if a man be charged himself, or two men, or more, with the commission of a certain act, then that particular act must be set out fully with its details and its dates, and particulars specifically.

Now where the claim is in an indictment like this where they charge rascality upon a certain route, they must make their charge in the indictment as broad as they propose to make their evidence; and they are only allowed to introduce evidence to maintain the charge made as to that particular route. Now, we are on this particular route, and no other, and I want again to call the attention of the court to exactly what this indictment says:

A large number of false and fraudulent petitions, applications, and papers purporting to be the petitions and applications of persons residing upon and in the neighborhood of the said post-route, to the said Postmaster-General, for an increased and an additional service in carrying and transporting the said mails on and over the said post-route.

That is all. Now, the simple question is whether under that charge they can prove the number of men and horses he used, and then show what the affidavit of Mr. Peck was, and endeavor to show a discrepancy between the affidavit and the facts. Now have we been called upon by this indictment to meet a charge of this kind?

Mr. HENKLE. I desire simply to supplement what my friend has said, and to call the attention of the court to some little law. I understand, if the court please, that at a preliminary stage of the case an application was made to your honor for a bill of particulars. And the court, upon due consideration, declined to furnish the bill of particulars, and I suppose, of course, it must have been for the reason that your honor was of the opinion that the indictment itself sufficiently advertised to the defendants what they were called upon to prepare to defend against, otherwise your honor would not have declined to furnish the bill of particulars.

Now, I call the attention of the court to Roscoe's Criminal Evidence, on page 191:

With respect to the general law relating to the delivery of particulars in criminal cases, very little is to be found in the books. Now, that the indictment is in many cases perfectly general, it seems to be a matter of right that the prisoner should have some information as to the particular charges intended to be brought against him. Those offenses in which the right of the accused to particulars has been recognized and in which they are most commonly required, are barratry, nuisance, offenses relating to highways, conspiracy, and embezzlement.

Again, on page 421:

Where the counts of an indictment for conspiracy were framed in a general form,

Littledale, J. (after consulting several other judges), ordered the prosecutor to furnish the defendants with a particular of the charges, and that the particular should give the same information to the defendants that would be given by a special count. But the learned judge refused to compel the prosecutor to state in his particular the specific acts with which the defendants were charged, and the times and places at which those acts were alleged to have occurred. (See further as to particulars, *ante* p. 191.) If particulars have not been delivered, as directed, the evidence will not thereby be excluded.

Now, if the court please, in these indictments where the charge is general, of course the defendant ought to have some opportunity to prepare himself by notice in the indictment as to the specific charge which he is to prepare to meet. If the indictment itself does not contain the charge or the information, then it is the duty of the court to furnish it to him by requiring the prosecutor to furnish him with a bill of particulars; otherwise he is all at sea.

Now, in this particular case, your honor, the affidavit that it is proposed to offer in evidence is made by a party who is dead, and we have had no notice that this affidavit was to be offered in evidence and cannot be expected to have made any preparation to meet it. I would like to have had an opportunity to discuss the question a little beyond this, as to the case in which an indictment is required to set out the particulars. Your honor has ruled repeatedly in this case that the indictment should charge no more than the conspiracy; that the conspiracy is the thing to be proved.

The COURT. No; I have not ruled that.

Mr. HENKLE. I mean with the exception of a single overt act; that the conspiracy itself is the gravamen of the accusation, and when you establish the conspiracy, you establish the guilt of the defendants.

Mr. MERRICK. No; his honor has not ruled that.

The COURT. No; I have not ruled that.

Mr. INGERSOLL. The court has ruled that you have got to establish the conspiracy and one overt act.

Mr. HENKLE. Well, the conspiracy and one overt act. Now, under the common law it was an indictable offense to conspire to do an unlawful or criminal act. There, your honor, the offense consisted of the conspiracy, because it was a conspiracy to do an unlawful or criminal act, and if you set out specifically and definitely what the conspiracy was, it was a sufficient indictment. But where the conspiracy was not to do an unlawful act, an act in itself innocent, and where it became criminal only by reason of the criminal instrumentalities that were employed in the execution of it, there the criminal instrumentalities were required to be set out with particularity, so that the defendants might be advertised of what was charged against them and be prepared to meet it.

Now, I think, if your honor will excuse me for the suggestion, that possibly your honor has fallen into a mistake in this case in treating this as a case belonging to the first class, where the indictment is for a conspiracy to do a thing in itself criminal or unlawful. The fact is that all these things that these men conspired to do in themselves are innocent. It is certainly not an offense against the law for these contractors to apply to the department to expedite the service or to increase it, and it is certainly not an offense against the law for Mr. Brady, the Second Assistant Postmaster-General, to allow the application and grant the increase and the expedition of the service. Those acts are all innocent in themselves, and they become criminal only when it is sought to hurry them out by criminal instrumentalities.

Now, that is this case. This is not the case where in the indictment would have been sufficient, your honor, to have alleged simply the

conspiracy with simply one act in furtherance of it; because the self, the conspiracy, is entirely consistent with innocence, and it is not necessarily criminal at all, nor unlawful for these parties to have combined, for these parties to have gone to General Brady and said to him, "Here, Mr. Second Assistant Postmaster-General, we desire to increase this route about which we are now talking increased to three times a week, or to seven trips a week, and we desire the time to be expedited, and for General Brady to have said, "Why, very well; you bring your petitions and recommendations of members of Congress and Senators, you shall have your increase and your expedition."

Now, your honor, there is nothing criminal in that. The law contemplates that the service may be increased, and that it may be expedited, and that is entirely innocent. The law contemplates that the Second Assistant Postmaster-General, upon a proper application to him in a proper case, may increase, expedite the service, and that is entirely innocent. And it is entirely innocent for these parties to combine to do that thing, and it only becomes criminal when they resort to criminal instrumentalities or conspire to use criminal instrumentalities for the purpose of effecting this object.

Now, I say that all the books lay down, and I desired to have that question upon authority—all the American authorities, even the English, so far as I have been able to find, lay down the rule that if the conspiracy is to do an act innocent in itself, there it only becomes indictable by reason of the criminal instrumentalities by which it is to be executed, and that wherever the parties are indicted for conspiring to do a thing which *per se* is innocent, not unlawful, not criminal, the indictment must set out particularly and specifically the facts which constituted the criminal agency, and I am prepared to submit authorities to your honor showing that that is the entire drift and current of the late American decisions. I do not know of a recent case in which the law has been held otherwise. If the court would like to hear authorities—

Mr. MERRICK. Oh, the court has decided that.

Mr. HENKLE. No; the court has not decided that.

Mr. MERRICK. The court decided it a month or six weeks ago.

The COURT. Have you closed your argument?

Mr. HENKLE. I have, unless your honor desires to hear authorities.

The COURT. I cannot open that question now.

Mr. MERRICK. If the counsel has closed, I would like to make a single remark.

Mr. HENKLE. I do not know what your honor decided upon the question to quash the indictment. But this is a question of evidence, and it is required to be set out in the indictment it is required to be proved, and the *allegata* and *probata* must correspond, and they cannot prove anything except what is alleged.

Mr. MERRICK. Your honor, there is the test: We cannot prove anything except what is alleged. That is the theory, and it is upon that theory that this objection rests, and probably no theory could be so manifestly false. The only thing required to be alleged in the indictment is the crime, and that crime, under the law, is made up of conspiring and the perpetration of an overt act in furtherance of that conspiracy. When you have set forth the allegation of a conspiracy to do an act in the United States, and then set forth that a certain act was done in furtherance of that conspiracy, which act is criminal under the statute of the United States, and set forth the overt act with as much particularity as you would set it forth if you were indicting the party for

body of the crime with which he is charged, you have done all I do.

If you can prove nothing except what is alleged you are content to limit yourself to the proof of the conspiracy by simply the overt act, for all that you have alleged is a conspiracy and overt act. You must then confine your proof of the fact of conspiracy to the proof of the overt act. Now, as your honor has stated recently, the evidence of the prosecution need not be put out in the indictment. The indictment must contain all the essential ingredients of the crime charged with sufficient particularities to notify the defendant of the offense for which he is to be tried. But it need not set forth the evidence by which you are to prove either the conspiracy or the overt act. The allegation of conspiracy and the allegation of overt act constitute the allegations essential to the crime, and the proof is of any allegation setting forth the crime. There is the vice of composition on the other side.

May it please your honor, the counsel has said that there is to be a limitation put somewhere; I do not know where exactly. I agree that there is needed a limitation in reference to some matter in this case in order that the time of its trial should not be indefinitely postponed, and that limitation I respectfully submit is a limitation on the right of counsel to reopen and reargue day after day a matter solemnly decided by the court.

I take up your honor's opinion precisely where Mr. Ingersoll left off in reading, for he read only the first paragraph, and I beg to draw your honor's attention to what no doubt has already been upon your mind. Your honor goes on from where the counsel left off, as fol-

low: "It is an offense to cheat the Government of the United States by a forged paper document or false affidavits, and if one of these parties or all of them had been simply for committing a fraud upon the United States by means of certain forged papers, then it would be necessary to set out what papers they were, and to prove them exactly, because there is a particular and distinct charge of a substantive crime. But here the charge is that these parties conspired among themselves to commit a fraud upon the United States, and that the means were various that they were to employ. Some of the means were by use of fraudulent petitions and applications to the Postmaster-General for additional service and increase of expedition on each of the hereinbefore mentioned and described post-routes as aforesaid." "The kind of fraudulent means which the indictment charges the conspiracy had employed."

Now, I will concede, for the sake of the present occasion, that as regards the overt act, the petitions that have been given in evidence are not false and fraudulent. On the contrary they seem to be genuine papers and genuine signatures. These petitions, so far as they are concerned, do not sustain the charge. But conspiracy is the main crime, and the conspiracy was entered into for the purpose of getting up false and fictitious papers, by which the Government was to be defrauded, but the indictment goes further, and charges that the conspiracy contemplated the use of other means to defraud the United States; for example, that by the said John W. Dorsey, John R. Miner, Stephen W. Dorsey, Harvey M. Vaile, Mountfort C. Rerdell, then and there did fraudulently make, and cause to be made and used said post-route, false oaths and declarations, and fraudulently written declarations and statements, falsely purporting to be statements made and signed under oath, and then a great many other specifications. I will pass over a number and read this:

Your honor then quotes from the indictment:

"By the means of the said Thomas J. Brady, then and there fraudulently, and for the purpose of gain, and profit of the said John W. Dorsey, John R. Miner, John M. Stephen W. Dorsey, Harvey M. Vaile, Mountfort C. Rerdell, Thomas J. Brady, and H. Turner to make, sign, and file in the said office of the Second Assistant Postmaster-General written orders for increase and additional service on and over the said post-routes, and for the increase of the number of trips each week on and over the said post-routes to a number herein mentioned and specified in each of the facts and agreements as aforesaid."

And then your honor goes on to draw your conclusion.

Now, I will illustrate the proposition very easily. This indictment charges a conspiracy and sets forth the means by which it was intended to be consummated as specifically as it can be done, and then sets forth certain overt acts. It sets forth the payment in the very end as an overt act, that payment being made upon the presentation of a false and fraudulent paper obtained in the Post-Office Department, false and fraudulent, because resting upon various false and fraudulent acts, criminal under section 5438 of the Revised Statutes. Am I bound to set forth how I am going to prove the claim to be fraudulent? No, I am going to show it was false? Am I bound to set forth that the claim had its origin in perjury?—that that claim had its origin in false claims sent to the Post-Office Department by the parties who enjoy now the fruition of that false claim, by which claim they rob the Treasury of the United States? No, sir; it is enough to set forth the claim itself as presented to the department, alleging it to be a false and fraudulent claim under section 5438, and then having so alleged to prove its fraudulent character by testimony not put in the indictment at all.

We now propose to show that this route blisters with fraud; that false affidavits were presented in order to procure the exercise of official discretion, if you choose, of Brady in behalf of the other conspirators, for his own benefit and for theirs. But if, in the course of the evidence, it should not be brought home to him that he knowingly made an order which he at the time understood to be a false and fraudulent order, then how stands the case? That he was deceived by the other conspirators, and was induced by false affidavits and fraudulent papers to exercise official discretion, so far as he was concerned, honestly, but to produce a fraudulent benefit to those who devised the scheme to deceive him. If it is necessary that he or any one should be in we will bring them all in. The protection from the overwhelming power of this evidence when it is sifted and thrown out is that he was deceived, a protection already intimated by the counsel on the other side.

Now, may it please your honor, we propose to show this false oath. We propose to show that while Brady expedited this route in 1878, the expedition was never practically put upon the route for one year afterwards, namely, in the fall of 1879, and that during that period these contractors drew the money for the work which they had thus corruptly obtained an order to perform, and which they and Brady knew was not being performed, and if I have proved that I have proved the hand of infamy robbing the Treasury of the United States on this route, and this alone, upon that proof I will have proved enough, for the combination was the combination of the men getting up this false affidavit and these papers, and then presenting this false claim, knowing the claim to be false, whoever those might be of the charged conspirators.

Now, may it please your honor, I do not know that I ought to consume the time of the court in arguing a question here repeatedly decided by your honor, and I beg pardon for what I have said even thus far. It was enough to read your honor's opinion. I have but one request to make, and that is that when a question has once been decided by the court it shall remain decided, unless your honor orders a reargument of the question. When I have once argued a question I have done with it. Time is unnecessarily consumed otherwise.

As to Mr. Henkle, I have this remark to make of the learned gentleman: That he was unfortunately not in the cases until a few days ago and is, therefore, not advised of questions decided prior to his appear-

ance here as the representative of one of the parties, and that upon the bill of particulars, and upon the question of criminality of the overt act, your honor heard full and elaborate discussion and decided all those questions to which his argument had reference when those motions were before the court. It is true they may come up again upon matters of evidence, but however they may come up, when once decided I think they ought to remain decided.

Mr. INGERSOLL. Just one word to call attention to the question at issue. The point is, when they have made the charges about a certain route in the indictment, whether they can prove other and different charges about that same route.

Mr. MERRICK. That was the very question before the court yesterday.

Mr. INGERSOLL. No matter how the court has decided that question. Now, that is the point. The gentleman last addressing the court was kind enough to say that they had already proved a conspiracy; that they had proved something. I beg leave to differ; there has not been proved one single solitary paragraph, line, word, or letter even tending to show that any conspiracy was ever formed with anybody, at any time, about anything, for any purpose—not one word, and I would like to submit this matter to the jury on the evidence without another word.

Mr. MERRICK. The counsel will see it submitted to the jury.

Mr. INGERSOLL. Not one word.

Mr. MERRICK. I say it is full of it, your honor. We are just simply at an issue of words.

Mr. INGERSOLL. This was not the time for the gentleman to argue it, and I say it simply in reply to him.

Mr. MERRICK. All right.

Mr. INGERSOLL. So that the only question is, after they have set out the fraudulent things done on a route, after they have set out all that was illegally done on a route specifically, calling attention to that route, then they have the right to go into anything else that is said to have happened upon that route, without giving us any notice. Now, that is the whole question.

The COURT. I believe the court has several times given expression to its views on this very question, or questions that are so near to it as to be hardly distinguishable. The last occasion was no longer ago than yesterday.

Now, the Government in this case has undertaken a mighty task. It has combined some seven or eight defendants in one conspiracy, and it has charged that the subjects of the conspiracy were nineteen different contracts and subcontracts, and it has undertaken to make out its case against all these defendants under this combination of contracts and subcontracts, and under charges specially setting forth the overt acts done by the conspirators and through the medium of the Post-Office Department and the Treasury Department, and it is a scheme of the most comprehensive character, and one which it is called to establish. That is all. But the court in looking at the offer of evidence in any particular case must regard the evidence in relation to the comprehensiveness of this indictment, and of the scheme of the prosecution. It is necessary that there should be a conspiracy. If the conspiracy be established as charged in this indictment, then it comprehends all these nineteen or twenty different contracts and the service under those contracts. From the relation of the conspiracy those contracts become blended. They are put into the concern as constituting one capital. The law in regard to the overt act in pursuance of the conspiracy requires one overt act,

and one overt act by any one of the conspirators is enough for the purpose of the prosecution. The conspiracy must be made out. A conspiracy is different from a combination, in this, that the conspiracy must have a corrupt character. A combination or a partnership is lawful. If all these parties had entered into a combination, each to put in his contract or his subcontract as his contribution to the common capital with a view of dividing the profits, that would have been perfectly lawful. There would be nothing wrong in that either morally or in the eye of the law. That would not, of course, be the subject of a criminal prosecution. It was necessary, therefore, not only that there should be a combination, but that there should be an unlawful combination, that is, a conspiracy with an evil purpose. It is not required that the indictment in charging the evil purpose shall set out the specific act to be proved. It is necessary that the indictment shall contain some averment to change the lawful combination into an unlawful conspiracy, and that is done when the indictment charges the combination first, and then charges that it was done for the purpose of committing a fraud upon the Government by means of false petitions, false papers, false affidavits, and so on. Without an averment of that kind the indictment would merely charge a lawful combination and an overt act set out in pursuance of a lawful combination would hardly have made a good indictment. But if the indictment charged in a general way that this was a combination in which these several parties had put their capital and made common stock of it, and that it was an evil combination, because it was done for the purpose of uniting in attempts to defraud the Government by the means generally set out, the means stated constituting the manner in which the evil character is attributed to the combination, that would not be enough, because the statute requires that in pursuance of this evil combination or conspiracy the indictment shall set out some act done in pursuance of that conspiracy. Well, now, it is alleged that here is a particular item which was put into this common fund as a contribution to the capital stock of the parties, consisting of route 4460, and that in regard to this particular route the indictment contains no specification of an overt act such as it contains in regard to some of the others.

Mr. INGERSOLL. Except in regard to the false petition.

The COURT. [Continuing.] And that therefore nothing can be received in evidence because of the absence of the overt act as applicable to this particular route.

Mr. INGERSOLL. To the absence of the charge.

The COURT. To the absence of a charge. But that theory is based upon this idea: that this particular route is itself an independent subject. Now, from the time that this particular route entered into the common combination and became a simple factor along with many others in the common combination it is immaterial whether the act done was an act done upon this route, or in pursuance of the views of the parties in regard to this route, or in regard to some other route which was its companion in the capital stock of the conspiracy. That is the view that I take of this subject. It is a good deal like a joint tenancy at the common law in a piece of land; the parties are seized *per me et per tu* and *per tu et per me*. You cannot divide it as you can an apple amongst several owners, but each one partakes of the character of the whole of all of the other ingredients of the combination. It is one whole made up of different parts, and all the parties according to the scheme of this indictment, in my view, have a legal interest in the whole and in every part.

Mr. INGERSOLL. That is, provided the conspiracy is established.

the COURT. Provided the conspiracy is established. Now, in regard to that question: In my view, the conspiracy has not yet been made out. They are going along in that direction, but with what success for the Government, or with what failure for the Government, the future alone will be able to disclose. For the present, regarding the evidence as respects this route as tending to show that there was a fraud on the part of one of these defendants alleged to be a member of the conspiracy—that there was a fraud contemplated by him in his conduct of that route for which he was the contractor, and in contemplation of the future progress of this cause in which the Government will be required to show that this fraud was put in as a part of the common capital stock of this concern, I shall allow the evidence to go in.

Mr. INGERSOLL. It does not go in as an overt act.

Mr. MERRICK. It is not offered for that purpose.

the COURT. It does not go in as an overt act at all, but merely for the purpose of enabling the jury to say whether this was a lawful combination between enterprising men in the pursuit of a lawful purpose, whether it was fraudulent and counterfeit paper put into the capital stock.

Mr. CARPENTER. Or whether there was any combination at all for that matter.

the COURT. This evidence does not bear upon that question. If it is offered for the purpose of proving the conspiracy, I should not accept it. As it is, I merely accept it for the purpose of ascertaining whether it will be sufficient to characterize the investment put into the capital stock as a piece of counterfeit coin.

Q. You stated, I think, that you commenced service on the 15th of September, 1878.—**A.** I commenced running three times a week.

Q. How long did the three trips a week continue?—**A.** It continued until some time in July.

Q. Eighteen hundred and seventy-nine?—**A.** Eighteen hundred and seventy-nine.

Q. When you were running three trips a week, what was the time?

A. One hundred and twenty hours.

Q. What time did you leave The Dalles?—**A.** I left there at 4 o'clock the morning.

Q. What time did you stop for the night, if you stopped at all?

Mr. HENKLE. One moment if you please. This witness says the time was one hundred and twenty hours. He has already testified that he only ran on a part of the route.

Mr. BLISS. You can cross-examine him directly.

Mr. HENKLE. I want to call his attention to it as he goes along.

Q. Where did you first stop for the night, if you did stop for the night?—**A.** At Coos Hollard.

Q. How far was that?—**A.** Fifty-six miles, I believe they call it.

Q. You laid over night there?—**A.** Yes, sir.

Q. And left the next morning?—**A.** Yes, sir.

Q. Where did you go that day?—**A.** To Camp Watson.

Q. How far is that?—**A.** It is between seventy and seventy-five miles.

Q. You staid there over night?—**A.** Yes, sir.

Q. Where did you go the next day?—**A.** To Canyon City.

Q. How far is that?—**A.** I think they call it sixty miles.

Q. So you left one morning and took three days and two nights on the route, laying over those two nights?—**A.** Yes, sir; laid over two nights.

Q. And when you were going back the other way you did the same thing?—A. Yes, sir; left Canyon City in the morning.

Q. In driving that distance, how many drivers and horses were employed on that portion of the road during that period of the time?

Mr. HINE. I object to the question.

The COURT. You can ask the question.

The WITNESS. In running three times a week?

Mr. BLISS. Yes.

A. Three men employed as drivers.

Q. How many horses?—A. There was thirty-four horses used between The Dalles and Canyon City.

Q. When seven trips a week commenced did you still drive on the same portion of the road?—A. I drove from The Dalles to Coos Hollard.

Q. How far was that?—A. Fifty-eight miles they call it.

Q. Leaving The Dalles at what time?—A. At 4 o'clock in the morning.

Q. What time did you get to Coos Hollard?—A. About 6 o'clock.

Q. And there another carrier took the mail?—A. He took it the next morning.

Q. It laid over night there —A. Yes, sir.

Q. From The Dalles to Coos Hollard, how many men and animals were employed during the seven trips per week?

Mr. HINE. I object to the question.

The COURT. Oh, ask the question.

A. Fourteen horses.

Q. How many drivers were employed?—A. Two.

Q. Do you know the number of men and horses employed between Coos Hollard and Canyon City when there were seven trips a week? Do not state anything but what you know of your own knowledge.—A. There were six.

Q. Six what?—A. Six men employed.

Q. How many horses?—A. I think there was forty-two, to the best of my knowledge.

Q. While there were three trips a week, was the running time increased any?

Mr. HINE. I object to the question, and take an exception.

Q. Was the time any less while three trips were run?—A. No, sir.

Q. How soon after seven trips were made was there any lessening of the time?

Mr. HINE. I object to the question, and take an exception.

Q. After seven trips commenced, was there, at any time, a lessening of the time in running over the route?—A. There was, along in the fall.

Q. The fall of 1879?—A. Of 1879.

Q. And not until then?—A. Not at that end of the route.

Q. Until the fall of 1879 how much time was employed between The Dalles and Canyon City?—A. It took three days when running it seven times a week.

Q. And two nights?—A. And two nights.

Mr. HENKLE. If the court please, I understand it is in evidence that way-bills were put on in July, 1879.

Mr. BLISS. Excuse me, sir. There is not a particle of evidence to that effect, and they were not in point of fact put on till long after that time.

Mr. HENKLE. Then, I beg pardon. I was mistaken. When were they put on?

Mr. BLISS. There were no way-bills put on upon this route until certainly as late as November, 1879.

Q. After seven trips a week were put on what change, if any, was made in the number of men and horses from the number that was used while there were three trips?

Mr. HINE. I object to the question, and wish an exception.

Q. After they put seven trips on did they increase the number of men and horses; and, if so, how many?

Mr. HINE. The question has been changed a little. I desire to have the change noted.

A. There was three drivers added.

By Mr. HENKLE:

Q. Between what points?—A. The Dalles and Canyon City.

By Mr. BLISS:

Q. How as to the horses?—A. [After a pause.] I think that there was eight or ten horses added.

Q. Now, after the time was increased in the fall of 1879, were there any men and horses added?—A. [After a pause.] There was two men added, I think.

Q. Between The Dalles and Canyon City?—A. Yes, sir.

Q. How many horses?—A. I think there was either two or four, to the best of my knowledge.

Q. Did they ever drive at night between Canyon City and The Dalles?—A. They did after they put on the expedited time.

Q. After the fall of 1879, you mean?—A. Yes, sir.

Q. And not until then?—A. No, sir.

Q. How was the service performed, on horseback, or buck board, or how?—A. It was performed on buck-boards, most of the time.

Q. One horse or two horse buck-boards?—A. Two-horse buck-boards.

CROSS-EXAMINATION.

By Mr. HINE:

Q. How long have you resided at Canyon City?—A. Between four and five years.

Q. What has been your business since you have been there?—A. My business is teaming now.

Q. Before you were engaged on this route what were you doing?—A. I was teaming.

Q. You drove from Canyon City to The Dalles first?—A. Yes, sir.

Q. How long did you drive from Canyon City to The Dalles; on this mail route, I mean?—A. I drove from the time it was three times a week until it was put on at seven times a week.

Q. When you first commenced driving was the mail being carried there three times a week?—A. Yes, sir; when I first commenced.

Q. At what date did you commence driving from Canyon City to The Dalles?—A. I think it was the 18th of November.

Q. Eighteen hundred and seventy-nine?—A. Yes, sir.

Q. And you continued to drive from Canyon City to The Dalles up to what date?—A. Along in July when they put on the seven trips a week; I don't know the exact date.

Q. The distance from Canyon City to The Dalles is how far?—A.

Some call it two hundred miles and some call it one hundred and ninety.

Q. How many of you did you say were drivers on that route at the time?—A. There were three of us when they ran three times a week.

Q. But before July, 1879. Were you running three trips a week when you first went on that route?—A. Yes, sir; when I first went.

Q. Three drivers?—A. Yes, sir.

Q. And how many horses? Did you say fourteen from Canyon City to The Dalles?—A. No, sir.

Q. How many did you say?—A. I stated that we had thirty-four from The Dalles to Canyon City.

Q. How many stations were there between The Dalles and Canyon City?

Mr. BLISS. At what time are you referring to now?

Mr. HINE. When he was making three trips a week.

A. There was nine stations, I believe.

Q. How many horses did you use going through there three times a week?—A. [After a considerable pause.] I think it was either sixteen or eighteen that I drove going through there.

Q. You rode sixteen or eighteen?—A. I say I drove sixteen or eighteen.

Q. How far did you drive from Canyon City out to the first station with the two horses you took from Canyon City?—A. Twenty-three miles.

Q. How long were you driving that distance?—A. It depended a good deal upon how the roads were.

Q. Generally, how long were you driving it?—A. About four hours; three or four hours, I should judge; three hours, anyway.

Q. And then you took two new horses, did you?—A. Yes, sir.

Q. How far did you drive those two horses.

[The witness paused for reply.]

Mr. HINE. Oh, you can tell us. You know you drove it so many times.

A. I do not know the exact distance.

Q. About how far?—A. I should judge it was about eighteen or twenty miles.

Q. How long were you driving those two horses that eighteen or twenty miles?—A. I guess about three hours.

Q. Then at that station you took up two new horses, did you?—A. Yes, sir.

Q. And you drove those two horses how far?—A. I drove them about twenty miles that day.

Q. How many hours were you driving that twenty miles?—A. It depended a good deal upon how the roads were; sometimes it took us longer, and sometimes shorter.

Q. State how long you consumed between the two extremes?—A. I have driven it in about four hours.

Q. It was generally from four to five hours, was it?—A. Yes, sir.

Q. Now, at that station you took up two new horses?—A. We generally staid all night at that station.

Q. What station was that?—A. We drove from Cottonwood to Camp Watson, and staid all night.

Q. You staid all night at Camp Watson?—A. Yes, sir.

Q. At Camp Watson, then, you took two new horses?—A. The same two in the morning.

Q. And drove them how far?—A. Drove them eleven miles.

Q. How long were you driving them eleven miles ?—A. I drove it in about two hours, I guess.

Q. And then you took up two new horses ?—A. Yes, sir.

Q. How far did you drive those two horses ?—A. I think we drove them twenty-one or twenty-two miles, they call it.

Q. And you were four or five hours driving that distance ?—A. Yes, sir.

Q. And then you took two new horses ?—A. Yes, sir.

Q. And so on through ?—A. Yes, sir.

Q. You drove, then, on an average four or five miles an hour on that road did you ?—A. I should judge so, sir.

Q. It is a military road, is it not, from Canyon City to The Dalles ?—A. It is.

Q. An old established military road ?—A. Yes, sir.

Q. You were driving through there in the winter ?—A. Yes, sir ; I drove through there in the winter.

Q. The Dalles is the distributing point for all the mail coming up the Columbia River from Portland, is it not ?—A. Yes, sir.

Q. Steamboats land the mail at The Dalles ?—A. Yes, sir.

Q. And sometimes the steamboats are not able to run on that river, are they ?—A. Sometimes it gets froze up.

Q. Then, when the river is opened there is a large accumulation of mail, is there not ?—A. Yes, sir.

Q. The Dalles, as I understand it, is the head of navigation at the Cascade ?—A. Yes, sir.

Q. The head of navigation of the Columbia River ?—A. There is a forlidge there.

Q. But it is the head of navigation from the ocean ?—A. Yes, sir.

Q. Your mails sometimes would weigh five or six hundred pounds, would they not ?—A. I took out a mail once I think that had between five and six hundred pounds, paper mail mostly.

Q. Was your mail generally paper mail ?—A. A good deal of it.

Q. Public documents and newspapers and pamphlets ?—A. I don't know ; I guess so.

Q. Nearly all of it ?—A. I have seen a good many of them in the way-sack.

Q. When they were distributed, you would see they were mostly public documents, newspapers, and pamphlets ; is that what you mean ?—

A. I have seen a good many of them in the mail-sack when they were distributed.

Q. You did not loiter on the way when you were carrying this mail, did you ?—A. No, sir.

Q. You knew Mrs. Wilson at The Dalles ?—A. Yes, sir.

Q. You found her unfriendly to the route, did you not ?—A. Not that I know of.

Q. Did she make a note of the time of your arrival each trip ?—A. I cannot say whether she did or not.

Q. You do not know ?—A. No, sir.

Q. You drove all day, did you not, in carrying the mail ?—A. Yes, sir.

Q. About how many hours a day would you drive ?—A. According to how the roads were.

Q. You would drive ten or twelve hours a day, would you not ?—A. If the roads was good ; yes, sir ; about ten or twelve hours.

Q. Your instructions were to drive right along, were they not ?—A. Yes, sir.

Q. In the winter season what is the condition of the roads generally and the state of the weather as to blizzards, snow storms, &c.?—A. The roads are often pretty bad in the winter time.

Q. Were you there in the summer and fall of 1878?—A. Yes, sir.

Q. Do you know of the Indians making a raid up through there and killing some men?—A. Yes, sir.

Q. Do you know how late in the fall those Indian disturbances continued?—A. No, I do not know exactly how late.

Q. Until in the winter?—A. Along in the fall.

Q. Along in the fall of 1878?—A. Early in the fall and the latter part of the summer.

Q. They created a good deal of alarm through that country, did they not?—A. Yes, sir; in some places.

Q. How was it about Canyon City?—A. There was quite a little excitement there.

Q. How many men were at these different stations that you have spoken of to keep the stock?—A. There was a man at each station to take care of the stock.

Q. Did you drive over this route after they put on seven trips a week?—A. I drove over part of it.

Q. But I understood you to testify in regard to the number of men and animals on the whole route after seven trips a week were put on; that was simply your guess, I suppose?—A. It is my information. I know how many stock was put on before when I drove three trips a week.

Q. Then you guess at what they put on after that?—A. I said, to the best of my knowledge.

Q. You do not pretend then to have any particular knowledge about it, do you?—A. Just my own certain knowledge of how many it would take to run it; that is all.

Q. That is just your belief of the number it would take?—A. Yes, sir.

Q. You do not know how many they had on, do you?—A. I was not over the route at the time.

Q. Then you do not know how many they did put on from the point you stopped, do you? You know nothing about that end of the route after you commenced driving seven times a week?—A. No, sir.

Q. Did they have any extra stock that you know of?—A. Not on my end of the road.

Q. Was it not necessary that they should have freight teams to deliver supplies? Did they not have freight teams?—A. Not at that time.

Q. Not when they were running seven trips a week?—A. Not until along in the fall. They had a team up on the upper end of the road.

Q. In the fall of what year did they have the freight teams necessary to supply the road?—A. They didn't have any team at The Dalles end of the road. They took it up above in the mountains.

Q. They had to hire their freight delivered, then?—A. Yes, sir.

Q. They had to hire teams to do that?—A. I believe they hired grain and hay hauled.

Q. Could you draw the whole feed for the horses with your mail wagon?—A. We could haul some of the grain on a buck-board.

Q. What proportion of it?—A. Enough to feed a couple of stations for a short time.

Q. They were compelled to supply all the stations with feed for the horses, were they not?—A. I guess so.

Q. And it took quite a number of teams, did it not?—A. I don't know how many teams they did have on the road. They only had one as far as I know.

Q. They had one constant pair of horses on your portion of the road, employed other teams from time to time?—A. Not on my end of road.

Q. Did they not have any teams on your end of the road at all?—A. Not that I remember of.

Q. Your end was how many miles?—A. Fifty-eight miles when it was seven trips a week.

Q. How many hours were you driving that fifty-seven miles?—A. I don't know about twelve hours, I guess; ten or twelve hours.

Q. That was the time you calculated to make according to your instructions?—A. It was our instructions to get in at a certain time at The Dalles if we possibly could.

Q. You did it generally, did you not?—A. I did when the roads was good.

Q. When they ran seven trips a week I understood you to say that they still consumed one hundred and twenty hours. How do you know that?—A. From the amount of drivers, I suppose, that they had on.

Q. How do you know the number of drivers they had, except on the trip that you drove?—A. I know that they had two south of me.

Q. How do you know that?—A. Because I met them at Coos Hollard, and staid all night.

Q. But you only went out fifty-eight miles?—A. The other driver went on there.

Q. Did one driver go from Canyon City to Coos Hollard?—A. One went from Camp Watson to Coos Hollard.

Q. How far is Camp Watson from Coos Hollard?—A. I should judge between seventy and seventy-five miles.

Q. Did you go over the route at all from The Dalles to Canyon City ever you commenced running the route seven trips per week?—A. No, not over all of it.

Q. Then you do not know, of your own knowledge, how many drivers were on that line, do you?—A. I went from Coos Hollard to Camp Watson.

Q. How far is that?—A. That is between seventy and seventy-five miles.

Q. You know of your own knowledge only of the distance that you traveled over yourself?—A. That is all.

Q. Do you mean to say that it took one hundred and twenty hours to go from The Dalles to Canyon City, two hundred miles?—A. That is what we used.

Q. One hundred and twenty hours?—A. Not from The Dalles to Canyon City; from The Dalles to Baker City.

Q. Were you ever over the route from Canyon City to Baker City?—A. Not the stage route; I have been through there.

Q. When were you through there?—A. I was through there before the company commenced running.

Q. Then you do not know anything about that, do you?—A. I don't know anything about that end of it at all.

Q. Then why do you testify that it took one hundred and twenty hours to go through there?—A. It took us three days from The Dalles to Canyon City.

Q. And you guessed at the rest?—A. I was informed that it took three days for it to go from there through.

Q. And that is all you know about it?—A. Yes, sir.

Q. Did you ever take more than sixty hours to go from The Dalles to Canyon City?—A. It took us three days and two nights.

By Mr. WILSON:

Q. You mean traveling by daylight?—A. We traveled during day-time and laid over at night.

By Mr. HINE:

Q. And you traveled, you say, from ten to twelve hours each That was your day's work?—A. I should judge about ten or twelve hours each day when the road was good.

Q. Your instructions were to go through on schedule time, were not?—A. Yes, sir.

Q. To get through on schedule time on all the distance that traveled?—A. I was instructed to get to The Dalles at a certain time if I possibly could.

Q. Why could you not carry that mail with one horse instead of two was there too much of it?—A. There was too much of it to carry on one horse and ride the same horse.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. Could you have carried it with one horse on the buck-board if you had only had one horse?—A. I guess I could most of the time.

Q. You spoke of having been instructed; who instructed you?—A. R. C. Williamson.

Q. You took your instructions from him, did you?—A. Yes, sir.

Q. Who was he?—A. He was the superintendent of the line out there.

Q. What did he instruct you to do?—A. To get to The Dalles at 6 o'clock.

Q. In the evening?—A. Yes, sir.

Q. Did he give you any instructions about getting to Canyon City?—A. No; no particular instructions.

Q. You spoke of there being men at the stations; one man at each station. During what period; the whole time or some portions of the time?—A. I think they would have a man at each station to take care of the horses.

Q. While you were running on the long schedule?—A. Yes, sir.

Q. There was a man at each station?—A. One that took care of the horses.

Q. When you ran by the shorter schedule, were the number of men at the stations increased?—A. No, sir; a man at each station.

Q. So far as you spoke of the number of men and horses on that portion of the route which you ran over, you stated that you gave that from your judgment of what would be necessary to run it, did you not?—A. Yes, sir.

Q. When they were running on the long schedule, did they haul their grain the same way, and afterwards?—A. I hauled some of it; very little of it. I have hauled it from one station to another.

Q. Do you know Mr. Williamson's handwriting?—A. I think I do; yes, sir.

Q. [Submitting petition marked 8 D.] Please look at the words "seventy-two," and see if you know in whose handwriting they are.

Mr. HINE. Wait a moment.

BLISS. Do not say who it is, but say if you know in whose hand-
g it is.

[After examination.] No, sir ; I could not say.

BLISS. That is all.

WILSON. If your honor please, Mr. Merrick suggests that I move
to take a recess of thirty minutes.

MERRICK. Brother Wilson and myself have to alternate in mak-
e motion.

COURT. Why so early ?

WILSON. It is nearly one o'clock, your honor.

MERRICK. It is a quarter of an hour after our time.

WILSON. I do not care anything about it for myself, but I think
Merrick needs it.

MERRICK. I am not very particular, but I should like to have it
ded a quarter of an hour for brother Wilson.

this point (12 o'clock and 45 minutes p. m.) the court took its usual
3.

AFTER RECESS.

MES M. BORDEN recalled.

By Mr. BLISS :

estion. [Submitting map.] I ask you if you made the original draft
which that sketch is prepared ?—Answer. Yes, sir.

From what did you make it ?—A. From the post-route diagram
e State of Oregon and Washington Territory.

From a large map covering Washington and Oregon ?—A. Yes,

It is a correct transcript from that, is it ?—A. Yes, sir ; the serv-
shown as on March 1st, 1879.

opies of the map in question, showing route 44155 from The Dalles
aker City, were distributed to the jury and to counsel.]

CROSS-EXAMINATION.

By Mr. WILSON :

Do you know how the service was prior to the 1st of March, 1879 ?

No, sir ; I just copied from the diagrams used by the clerks.

All these lines that are drawn on this map that do not show the
s and the streams represent mail routes, do they ?—A. Yes, sir ;
he colored lines.

Blue, yellow, and red ?—A. Yes, sir ; and black.

By Mr. BLISS :

Why are the different colors adopted ?—A. Black represents six
s a week.

What does the blue represent ?—A. Three times.

The yellow ?—A. Twice ; and the red once.

Is that true as to all the maps that you have made ?—A. Yes, sir.

MERRICK. This route is a blue line.

WITNESS. Yes, sir ; three times a week.

BLISS. At that time ?

Mr. WILSON. You have not got this route represented here times a week.

The WITNESS. No, sir.

Mr. BLISS. He said March 1, 1879, and of course it was not times a week then.

Mr. WILSON. I simply want the jury to understand it.

EMIL SCHUTZ sworn and examined.

By Mr. BLISS:

Question. Where do you reside?—Answer. I reside in Grant Camp Watson.

Q. Oregon?—A. Yes, sir.

Q. How long have you lived there?—A. The last six or seven years.

Q. Have you had anything to do with the transportation of mail on mail route 44155, from The Dalles to Baker City, or any part of it?—A. I sold the company some stock, and have kept their stock during the time that they have been running.

Q. Did you carry the mail at any time on any portion of that route?—A. No.

Mr. BLISS. No; in any way.

A. Prior to getting the contract by them I run it for three years.

Q. Prior to July, 1878?—A. Yes, sir.

Q. After July, 1878, did you continue it for any time?—A. Yes, up to the 1st day of September.

Q. Eighteen hundred and seventy-eight?—A. I carried it from the 1st of July, 1878, to the 1st of September of the same year.

Q. Over the whole route?—A. No; I only used to go from The Dalles to Canyon City.

Q. After the 1st of September had you anything to do with the mail route?—A. Nothing more than I sold them some stock and appointed agent to stock the road from Canyon to Baker City for them.

Q. When was that?—A. That was in the early part of September and the latter part of August, 1878.

Q. You put on the stock?—A. I sold them some horses and appointed agent to stock the road from Canyon to Baker City.

Q. How many horses did you put on the road from Canyon to Baker City?

Mr. HINE. I object and note an exception.

A. I put on ten, and that not being sufficient, as agent of the company I put two more on, and on my return to The Dalles I saw that some more should be bought and put on.

Q. Do you know how many were put on?—A. I have never been over that road since between The Dalles and Baker City.

Q. Have you been over the road between The Dalles and Baker City?—A. Frequently.

Q. Have you had anything to do with this company?—A. Yes, more than keeping their stock.

Q. You kept their stock?—A. I kept their stock at my place the night station ever since they have been there, with the exception of three or four months.

Q. Your place is Camp Watson?—A. Yes, sir.

Q. How much stock has been kept at your place?

The WITNESS. At different times?

Mr. BLISS. Yes.

A. I have most generally not less than four, and sometimes two over night.

Q. You mean just the other way, don't you?—A. Oh, yes; not over four and not less than two.

Q. They were left at your place, you say, over night. How do you mean! Did they drive in there?—A. When they were running three times a week I would have twice four horses and twice two horses.

Q. In each week?—A. In each week.

Q. From which way would those horses come?—A. When there was four horses there, one pair would come from each end of the route; when I had two it was only one.

Q. They staid over night?—A. Yes, sir.

Q. When did they leave?—A. In the morning.

Q. That was when they were running three trips?—A. Yes, sir.

Q. Do you know when they began seven trips?—A. I do.

Q. When was it?—A. I believe the first night they stopped at my place was on the 5th of July, 1879.

Q. Then, how many horses did you have from that on?—A. There would be every night four horses and two drivers.

Q. Two coming from each way then?—A. Two coming from each way.

Q. When they commenced seven trips a week they stopped over night at your place still, did they?—A. They did for a while.

Q. For how long?—A. I should judge about four months; I could not exactly tell.

Q. That brought it down to the fall of 1879?—A. To the fall of 1879.

Q. Then they commenced running nights, did they?—A. Yes, sir.

Q. After they commenced running nights, how much stock did they have at your place?—A. They kept two span there, one span for each driver each way. Each driver would drive his own span.

Q. So you had four horses there?—A. Four horses there.

Q. Was there any time when you had more than four horses there?—A. At no time that I recollect, except extras that would pass through.

Q. When they ran an extra?—A. No; if they would change any stock from one end to the other I would sometimes have a span or two over night, while they were going to their destination.

Q. Now, how about the drivers, after they got running on faster time in the fall of 1879?—A. They never stopped at my place after that. They camped beyond me, each way.

Q. Have you any other knowledge, beyond what you have stated, of the number of horses used upon that route after the 1st of September, 1878?—A. Not on the route between Canyon and Baker. I never have been over that route.

Q. But have you between The Dalles and Baker City, other than what you have stated?—A. Nothing more than a casual observer. I have been over the road frequently from Canyon to The Dalles, and as far as I know, I believe I know what stock they had.

Q. How much stock did they have, in your observation, between Canyon and The Dalles, before putting on seven trips?—A. To the best of my recollection they used between Canyon and The Dalles from thirty-four to thirty-six horses. There might be some more, but that is to the best of my recollection.

Q. And how many drivers?—A. Three times a week; three drivers between Canyon and The Dalles.

Q. Then when they made seven trips per week without change of time how many horses did they have between Canyon and The Dalles?—A. To the best of my recollection they had between forty-two and forty-four horses. There might be one span or so that was in use more than that.

Q. How about the drivers at that time?—A. They had six drivers.

Q. Now, in the fall 1879, when they made seven trips and ran nights, have you any knowledge of how many horses they had between Canyon and The Dalles?—A. They have changed several stations there, and to the best of my recollection, there is hardly any more horses, but there was two more drivers put on; but they have changed the stations to a certain extent to different places, and my knowledge is not so correct as it might be; I am not positive about it.

Q. When you ran that route from July 1, 1878, to September, 1878, how many men and horses did you use?—A. We done it twice a week, using two horses and running four-horse stock; that is, I had four-horse wagons, coaches, and thoroughbreds, and I carried passengers.

Q. You were carrying something besides the mail?—A. Yes, sir.

By Mr. HINE:

Q. How many horses did you say you had?—A. I have not given the number.

By Mr. BLISS:

Q. How many had you?—A. I had fifty-two.

Q. Carrying passengers and mails?—A. Yes, sir.

Q. [Submitting a paper.] Please look at this petition, marked 21 D, and see if you recognize any of the names upon it.

[The witness examined the petition.]

Mr. TOTTEN. Is that a petition on this route or on another one?

Mr. BLISS. On this route.

A. I do not recognize a single solitary name in our neighborhood along that route. I recognize a name there of a man that lives in Yakima County, Washington Territory, if that is the same man. I hardly think it is the same man.

Q. How well acquainted are you with the people living along that route?—A. I have lived in that part of the country about twenty years, and acted as sheriff for ten years, and am pretty familiar with the residents of that country.

Q. You do not recognize any of these names?—A. I do not.

CROSS-EXAMINATION.

By Mr. HINE:

Q. You were asked about running this line from July 1 to September 1. For whom did you run it?—A. I run it for John Hailey, as I understood. He smuggled in and got a special contract for it by a sleight-of-hand performance.

Q. He got it by some sleight-of-hand performance, you say?—A. Yes, sir.

Q. Never mind about that. You ran it for him?—A. I did.

Q. Did you commence running it on the 1st of July?—A. Yes, sir.

Q. Do you know from whom he got that contract?—A. I believe from the postmistress at The Dalles. I was running it under the instructions of Mr. Hall, the postmaster at Canyon City.

Q. You were running it before this under instructions from Mr. Hall.

postmaster at Canyon City?—A. On the 1st of July the Indians gone through the country, or were in the country at the time, and were anxious to have mail communication, and Mr. Hall came to and told me if I would carry the mail that he would see that I would be paid according to the old pay. On those conditions I took the mail. My step-son took the mail out toward The Dalles.

How much was the old pay?—A. The original contract, I cannot tell you exactly the figures.

Then you found that Mr. Hailey had a contract from the postmaster at The Dalles?—A. Yes, sir.

To commence from the same time?—A. To commence from the same time.

And he sublet to you, or how?—A. He made arrangements with a partner from that time on to keep running and carrying it.

Do you know how much Hailey's contract with this postmistress was for?

Mr. BLISS. It is in evidence here.

I could not positively tell you. I have never charged my memory with it. I was aware of it at that time.

You had been running the route for some time, had you?—A. I had run the route three years previous to that.

Under a subcontract?—A. A subcontract; yes, sir.

About how far were you residing from The Dalles?—A. One hundred and forty miles.

And how far from Canyon City?—A. We call it sixty.

You have something of a farm there, have you not?—A. I am in stock business at present.

That is in the mountains, is it not?—A. Right on top of the spur of the Blue Mountains, sir.

You never had anything to do with running the mail after the 1st of September, 1878, except keeping the stock for the parties?—A. Nothing more than keeping the stock. I have drove over the road on account of the sickness of some of the drivers, and my sons have been there. I have taken their place once or twice; not very often.

And you only kept such stock as reached your place, which was a station on the line of the mail route?—A. Yes, sir.

You really had no personal knowledge of the amount of stock that was used on that route, I presume?—A. Nothing more than observa-

You never counted them?—A. When I would drive I most generally would change the horses when I got to the station, and that would give me a pretty good idea.

You only knew the horses that you used on the one or two occasions when you drove over that route?—A. Yes, sir.

And that is all you know about it?—A. When I would go over the road as a passenger.

You were carrying passengers at the time?

Mr. WITNESS. During the time I ran it?

Mr. HINE. Yes.

Yes, sir.

Did these parties also carry passengers when they were running three trips a week?—A. They did; yes, sir; but their facilities were not quite so good.

Not so good as yours?—A. No.

When they were running three trips a week did they also carry

passengers?—A. They have carried passengers all the time, more or less.

Q. You have some judgment of horses?—A. Yes, sir.

Q. A team that is required to go only about two and a quarter miles per hour would make thirty miles a day without much trouble going at that speed?—A. I should say that they would not stand it long every day.

Q. Having thirty miles to go, and not being required to go faster than two and a quarter miles an hour. They could go faster and then make up by resting. Would a fair horse do that?—A. Yes, but thirty miles every day is a long distance; at least that is what we consider as stagers.

Q. The Dalles is at the head of navigation on the Columbia River at the Cascade?—A. Yes, sir.

Q. And the mails from the ocean going into Oregon and Washington Territory, and some in Nevada and Utah, come through that way, do they not?—A. Occasionally. That would be entirely left I believe, to the judgment of the postmaster. There were times when there was very heavy mail when I ran it; and the general mail——

Q. [Interposing.] You had to carry all the mail that the postmaster was disposed to put into your pouch?—A. Yes, sir.

Q. And sometimes they would put in all this through mail, would they not?—A. I could not tell you.

Q. Sometimes your mail would be very heavy?—A. In fact, we commenced to deliver our mail after we left The Dalles about thirty miles. From there on there is post-offices along the road all the way up to Canyon City.

Q. Under your observation, what would be the weight of the mail from The Dalles through to Canyon City?—A. Going to Canyon City, I believe, I would safely say it will average four or five hundred pounds; from three hundred pounds up.

Q. And sometimes a good deal more?—A. That would be a fair estimate.

Q. Would that be mostly newspapers and pamphlets and public documents?—A. Well, there would be a paper sack and two pouches with mail, one which we consider the way-sack, to be delivered along for the way post-offices, and the other one considered a through sack. That through sack would never be opened over the route.

Q. Then, there was one sack which was treated as through mail?—A. Yes, sir.

Q. That went from The Dalles to Baker City?—A. It would go to Canyon City, and that is as far as I ever carried it, or had trace of it.

Q. When you put on the stock for this road it ran around by Robinsville?—A. Yes, sir.

Q. How much further is that?—A. From personal observation, I would call it pretty near fifteen miles, if not more, to go by the way of Robinsville.

Q. The road is much worse that way, is it not?—A. It is impassable in the winter, I understand.

Q. You say that you sold horses for carrying this mail route in September, 1879?—A. Yes, sir.

Q. Did you sell only such stock as you had used?—A. I sold what I had left.

Q. How many did you sell them?—A. Ten at that time.

Q. That is all you know about the number they bought, I suppose?—A. While acting as their agent I put on two more, two that were sent

me belonging to the company. That was twelve head that I placed that route at the time.

Q. About how far apart were these stations when three trips were made on the road?—A. They were from eighteen to twenty-three miles apart. I believe there is one that is fifteen, or twelve and a half, as they call it.

Q. When it was increased to seven trips per week there were more stations added, and frequently they put on more stock between stations, did they not?—A. I suppose so. I have no personal knowledge to that effect, but I know they changed the stations. In fact, they changed it from my station and built two new stations, one on each side of me.

Q. Do you know that they had on when they were running seven trips a week from one hundred and forty to one hundred and fifty horses along the line of the road—clear through, I mean?—A. I could not give any evidence to that effect, for I had at that time specially never kept any run of it, nor was I over the road very often.

Q. Do you know anything about how many extra horses were kept in use on that route?—A. No; I only know of the stations that they had.

Q. The number you have testified about is the number that you have actually seen in use as you have incidentally gone over the road?—A. Yes, sir.

Q. That is all?—A. Yes, sir.

Q. Is it not essential in such a country that a person should have considerable number of extra horses?—A. It would be very convenient.

Q. Is it not really necessary to prevent failure in carrying the mail?—A. If the means will allow, I believe it is; my means never would permit.

Q. Is it not necessary to have quite a number of freight horses to carry supplies for the route?—A. I know the company had what they called a forage wagon that was employed in hauling grain and hay.

Q. Were they not compelled to hire quite a number of horses?—A. I have at times been compelled to hire help to bring the grain.

Q. I am speaking of those running this route since you were there.—A. I am only giving you my own knowledge. I have been compelled to employ teams to haul my grain to different stations.

Q. I am asking you about the time while these parties were running.—A. I only know of this one forage team they have got. How many more they employ I have no means of knowing.

Q. Now that route is reduced to three trips per week, is it not?—A. It was when I left home.

Q. Do you know of their having sold off a good many horses since they stopped running seven times a week?—A. I do not know of their having sold a horse.

Q. You have not heard of it?—A. I haven't heard of it.

Q. Do you know anything about how many horses they still keep on hand, running three times a week?—A. That I do not know.

Mr. BLISS. I am going to object to that. They would not allow us to inquire as to anything that occurred from the time Mr. Brady went out down to the present time. It strikes me that they are now putting to the case what certainly has no connection with it.

Mr. MERRICK. In addition to that is the objection that the number of horses applies only to expedition and not to the number of trips.

Mr. HINE. I do not care about it.

The COURT. They withdraw the question.

Q. [Submitting a paper.] I show you a petition, marked 10 D, and ask you if you have ever seen it before?—A. I have, sir.

Q. Was that petition circulated by you?—A. Yes, sir.

Q. Perhaps it was written by you?—A. It was.

Q. At what time?—A. Some time in October.

Q. What year?—A. Eighteen hundred and seventy-eight.

Q. Does that correctly express the wishes of the people along the line of the route?—A. Well, I have not consulted the people about this. I wrote it at that time, being employed for the company or with the company in connection with it, to facilitate the increase of mail, and I wrote this petition and circulated it in good faith, and I believe every name on it is genuine.

Q. About how many names are there on that petition? You need not count them, but just state generally. There are two feet of names of two columns each, are there not?—A. Well, I guess so.

Q. Who was the first man that signed it?—A. Myself.

Q. Is what is stated in that petition true?—A. All the facts that are stated in that petition are true to the best of my knowledge at the time. I acted in good faith.

Q. [Submitting another paper.] I show you another petition marked 26 D, and ask you if you ever saw it before?—A. I have.

Q. Who prepared it?—A. I did.

Q. Were you in the employment of the company at that time?—A. No; not exactly. I had still the appointment of agent, but I did not accept the position; at least something better was in view that I had.

Q. Who circulated that petition?—A. Going down to Salem, our capital, during the time of the sitting of our legislature, at the solicitation of the company I presented this to the representatives, and had them sign it; those representatives that live in the country through which the route was running.

Q. Does that include all the members of the legislature living along the line of the route?—A. Yes, sir; I believe it does.

Q. Are the facts stated in that petition true?—A. They are all the same as the other petitions.

Q. You said you did that at the request of the company. How do you know that?—A. Not the company. I mean the man whom I dealt with, L. P. Williamson, who was the representative of the company, as I supposed.

Q. Did you find him an honest, straightforward man?

Mr. BLISS. Oh, now, gentlemen, don't give Mr. Williamson a certificate of character.

The COURT. This is not the point to inquire about character.

Mr. MERRICK. That is rather an important point hereafter.

Q. I will ask you the question whether you were requested to do anything dishonest?—A. Not in the least.

Mr. MERRICK. Wait a moment. Is Mr. Williamson in court? Do you see him?

The WITNESS. Yes.

Q. Whatever you did you did from the purest motives in regard to circulating petitions, did you?—A. I did.

Mr. MERRICK. Where is Mr. Williamson?

The WITNESS. He is sitting right back there.

Mr. HINE. I will read this petition.

Mr. BLISS. What is it?

Mr. HINE. The one signed by the members of the legislature.

Mr. BLISS. I am not going to object; but it has been read, and is read out in full in the minutes.

Mr. MERRICK. It is printed.

The COURT. It has been read.

Mr. HINE. It is very brief.

The COURT. You want to emphasize it.

Mr. HINE. I will read part of it:

We respectfully recommend that the service be increased on said route to a daily one. The recent Indian raids through that section and the large immigration during the past year render this increase absolutely necessary. We also ask that the whole of time may be reduced to seventy-two hours.

Q. That is correct, is it?—A. It must be, because it is there.

Q. [Submitting another paper.] I send you another petition marked 9 and ask you if you ever saw it before.—A. No, sir.

Q. Are you acquainted around Baker City?—A. I am, sir.

Q. See if you do not find the names of persons around Baker City?—A. I recognize several.

Q. You have not examined it a very great length of time?—A. No, you wish me——

Q. [Interposing.] You stated after a long examination a short time that you did not recognize it.

Mr. BLISS. You asked him if he ever saw the petition. You did not ask him about the names.

The WITNESS. That is the question you put to me.

Q. Do you recognize those names as of people residing around or near Baker City?—A. Near Baker City. I am only acquainted in the county itself, and if this petition was circulated through the county I will do a very little service.

Q. You recognize quite a number of them?—A. I recognize the first right immediately in Baker.

Q. You are not acquainted outside of Baker City along the line of the road?—A. Not in the county. It is a very large county.

Q. So you knew very few of the men who got their mail from Baker City?—A. I know those that live along the road towards The Dalles.

Q. From Canyon City toward The Dalles?—A. Towards The Dalles; all outside of that I do not know.

Q. You know then very little or nothing about the residents, except between Canyon City and The Dalles?—A. Yes, sir; that is all.

Q. Was there not in 1878 a large military force kept in that country?

A. Oh, they were all through the mountains there.

Mr. BLISS. The woods were full of them?

A. Yes, sir.

Q. Will you give to the court and jury something of an idea as to the Indian raids through that country in the summer and fall of 1878, from your experience with them if you have had any?

Mr. BLISS. I am not going to object, but I really do not see the pertinency of it.

Mr. HINE. It may show why these gentlemen did not put the route before.

Mr. BLISS. With reference to that I am not going to object, but simply to draw your attention to the fact that this service was rendered by this man and others during that period. That being so, to say that there were no Indian raids there obviously amounts to nothing. The mail was carried by other people. They did not carry it.

Mr. HINE. There is a good deal of complaint about the number of mails——

Mr. BLISS. [Interposing.] I do not object.

Q. Now, tell us something about those Indian troubles there in summer and fall of 1878.

Mr. MERRICK. Is it worth while to consume time on this, your honor?

The COURT. I hardly think it is. I do not see what it has to do with the case.

Mr. MERRICK. [To the witness.] They did not scalp you, did they?

The WITNESS. They came pretty near it.

Mr. TOTTEN. We are laying the foundation for a conspiracy.

The COURT. Yes; on the part of the Indians.

Mr. TOTTEN. Yes.

The COURT. They are not before the court.

Mr. MERRICK. The Army attends to their conspiracy and this court attends to yours.

Mr. HINE. We might have had the answer while you are discussing the matter.

Mr. BLISS. It has already developed that the witness had an experience.

The COURT. If the service was performed why do you go into the history of the Indian trouble?

Mr. HINE. I will briefly state my reasons: they claim that we had specified for this route by some affidavit a greater number of men and animals than were needed. Now as an element in determining whether that fact be important or not, and as an element in determining whether it is a fact, the difficulty in running the road and the troubles over the road become an essential factor.

The COURT. Your inquiry is directed to 1878, is it?

Mr. HINE. The summer and fall of 1878.

Mr. BLISS. The difficulty is that at that time we show that you had on too few.

Mr. MERRICK. I was going to read the oath to your honor.

Mr. HINE. We will get the condition of the road; that is what we want.

The COURT. The increase of service was not put on until 1879.

Mr. BLISS. The three trips were put on in October, 1878.

Mr. MERRICK. The oath is found on page 679 of the record.

Mr. HINE. What is the date of that?

Mr. MERRICK. September 18, 1878.

Mr. HINE. That is just the time I am inquiring about.

Mr. MERRICK. [Reading:]

The number of men and animals necessary to carry the mail on route 44155, The Dalles to Baker City, is 8 men and 10 animals, and the number necessary to carry the mail on said route, with a schedule of 72 hours, will be 26 men and 66 animals.

They have never carried it with eight men and ten animals since the route was started.

Mr. HINE. How do you know?

Mr. MERRICK. By the proof.

The COURT. I suppose where there were more Indians more men would have had to carry the mails.

Mr. HINE. Yes, but here there were more trips and more men. They were looking forward to emergencies. The number necessary to carry the mails would be the number stated perhaps, and perhaps not. If they undertake to do a thing in the future then they have to provide for an emergency. Considering the future, considering there was a disturbed condition of the country, they would have to prepare for meeting that disturbed condition.

The COURT. The difficulty about the proposition is that the affidavit bears a certain date, and you speak of the number necessary to carry it at this date.

Mr. WILSON. Oh, no.

The COURT. The affidavit refers to that date.

Mr. MERRICK. The difficulty about it is not only as you state, but as you will see it is in the present and in the future.

The number of men and animals necessary to carry the mail is eight men and ten animals, and the number necessary to carry the mail on said route on a schedule of seventy-two hours will be six men and sixty-six animals.

Mr. HINE. Then I will ask the question and reserve an exception.

Mr. MERRICK. I will withdraw any objection. Let him ask about the Indians.

By **Mr. HINE**:

Q. [Resuming.] Will you please advise the court and the jury as to the condition of that country in reference to Indian disturbances during the summer and fall of 1878?

The COURT. The objection is withdrawn.

A. There was an Indian raid through that country—

Mr. MERRICK. When?

A. [Continuing.] They arrived in the John Day valley, as we call it, on the 29th or 30th of June, and they destroyed the stations along there, drove off my stock, wounded me a little, and carried everything before them, and then they went into the Umatilla country.

Mr. MERRICK. In 1878 was that?

A. In 1878. [Continuing.] They remained in that country, and remained all through the mountains there until late in the fall of the same year. They got scattered and tried to get back the best way they could. That is the story in a few words.

Q. [Continuing.] Did they come there stealing horses through this country in the fall and winter of 1879?—**A.** Whenever the bad weather comes the Indian goes to the reservation.

Q. How late in the early winter of 1879 did they last come through there and pick up horses along the line of this route?—**A.** There may have been a few scattered along in the mountains, but September was the last time we saw or heard of them going through there.

Mr. MERRICK. This affidavit bears date September 18. The fun was over then.

By **Mr. WILSON**:

Q. Was the fun over on the 18th of September?—**A.** It was not very safe to push out alone.

By **Mr. HINE**:

Q. A petition was handed you upon which you did not recognize the names; do you know anything at all about that petition?—**A.** I do not.

Mr. HINE. These are, many of them, soldiers in the Army?

Mr. WILLIAMS. They signed themselves so.

Mr. BLISS. They signed themselves as soldiers, but they did not sign themselves as soldiers up there.

By **Mr. HINE**:

Q. About what time was that petition got up that you got up for the members of the legislature; do you recollect?—**A.** In October.

Q. In October, 1878?—**A.** Eighteen hundred and seventy-eight.

Q. How far is the capital of the State from your residence?—
About three hundred miles.

Q. You went there at your own expense, did you not?—A. Yes.

Q. Nobody paid you anything for that?—A. It was private business of my own; I had an ax to grind.

The COURT. Well, these are genuine papers, and I do not see why any more time should be spent upon them. The time of the court is of tenfold more value than these papers are of consequence to you or to anybody in this case.

Mr. HINE. I know; but the other side show a petition and try to make it appear that this man was well acquainted over the line of the route, when he does not know anything about the people, and they try to affect us in that way. We find that this is a candid witness, though he states very many things not of his personal knowledge. We have shown that he does not know the parties living on the line of the route who got their mail from the different post-offices.

Q. [Resuming.] You have been here some time, I believe?—A. A little over three weeks.

Q. And you say you are not working for the company now? You are not an admirer of a superintendent of the company?

Mr. MERRICK. Wait a moment; I object to that question.

Q. [Resuming.] Why did you discontinue keeping stock for the company?

Mr. MERRICK. I object, your honor.

The COURT. It affects the weight of his testimony, possibly.

By Mr. BLISS:

Q. Was the mail run on buck-boards after you gave it up?—A. Yes, sir.

Q. One horse or two horses?—A. Two horses.

Q. And they carried passengers occasionally on those?—A. They did.

Q. You said a horse could not run thirty miles a day every day in the week; suppose he run one day and laid over?—A. That changes it.

Q. Suppose he ran one day thirty miles, and the next day thirty miles back, and then laid over two days?—A. I suppose he could stand that.

Mr. TOTTEN. It would depend upon the character of the horse.

The COURT. We will not have an investigation into the breed of horses.

Q. [Continuing.] You spoke of there being some horses that were turned out; what did you mean?

Mr. HINE. I object, to the question, your honor.

Mr. TOTTEN. I object, for the purpose of economizing time.

The COURT. I overrule that question.

Mr. BLISS. They raised the question that they had extra horses that were turned out. I am just going to ask him about that. They brought that into the case.

The COURT. They put it in. You may ask him that question.

Q. [Resuming.] In reply to that question you said there were some extra horses turned out; what did you mean?—A. I knew of some horses in my immediate vicinity; they would help out; whenever required or needed they would be put on.

Q. You carried the mail from July, 1878, to September, 1878, in spite of the Indians, did you not?—A. I did.

Q. You made all your trips?—A. I did.

Q. You know the residents of Baker City. You said you did not know

the residents outside of Baker?—A. I am not very extensively acquainted, but I know the principal business men in Baker City.

By Mr. WILSON :

Q. How many times did you see Mr. Turner and General Brady out there on those buck-boards?—A. I never had the pleasure of seeing them out there at all.

The COURT. I want to ask you a question that has occurred to my mind.

Q. [By the COURT.] You said you sometimes carried the mail weighing four or five hundred pounds?—A. Yes, sir.

Q. On a buck-board?—A. Yes; on the buck-board.

Q. And passengers besides?—A. Oh, yes.

Q. What sort of a buck-board was that?

Mr. MERRICK. [To the witness.] Describe a buck-board to the court. [To the court.] If you never saw one.

The COURT. I have seen such a buck-board as we have about here.

Mr. WILSON. That kind of a vehicle that Mr. Merrick has up here in Maryland, I think.

The COURT. The hind-wheels and fore-wheels of the vehicle are connected by a board or two.

The WITNESS. By slats.

The COURT. And the seats are placed there.

The WITNESS. Only the seat in the center, and they are fastened. There is room enough behind them to fill in the mail matter, and in the seat itself there is a box that they can fill also.

The COURT. The seat is placed in the center, between the two sets of wheels, front and rear, because it is the easiest, I suppose.

The WITNESS. The easiest way to ride.

By Mr. TOTTEN :

Q. When you want to jerk a fellow up, you put him over the hind-wheels, do you not?—A. Yes, sir.

Mr. TOTTEN. I would like to know, your honor, how many seats a buck-board out there had.

The WITNESS. When the company first commenced they had two seats on their buck-boards.

The COURT. This is a particular matter that we are inquiring about.

The WITNESS. At present they have only one seat in them.

By Mr. MERRICK :

Q. A buck-board sometimes has three or four seats running across it?—A. No; no more than two. And they have to put them on springs to be able to ride on them.

By the FOREMAN : [Mr. Dickson.]

Q. In your direct testimony you stated that you used fifty-two horses altogether?—A. I should judge fifty-two were used in transporting the mail over this route—mail and passengers.

Q. You used fifty-two altogether?—A. Altogether.

Q. Then I understood you correctly?—A. Yes, sir; that is correct.

WILLIAM COWNE sworn and examined.

By Mr. BLISS :

Question. Where do you live?—Answer. Camp Watson.

Q. Oregon?—A. Yes, sir.

Q. Have you had anything to do with carrying the mails on route 44155?—A. Yes, sir.

Q. What did you have to do with it?—A. I carried the mail from The Dalles to Canyon.

Q. When did you commence?—A. The first part of September. I don't remember that it was the first of the month exactly. I think it was between the first and fifth of September, 1878.

Q. Did you go all the way from The Dalles to Canyon? Did you drive the whole way?—A. Not at first I did not. At first I drove from The Dalles to South Forks.

Q. And afterwards did you drive to Canyon?—A. Yes, sir.

Q. When did you commence to drive to Canyon?—A. I think the 15th of November, 1878.

Q. And after the 15th of November you drove all the way from The Dalles to Canyon?—A. Yes, sir.

Q. How long did you continue to do that?—A. Until the 1st of July, 1879.

Q. Did you quit the service then?—A. Yes, sir.

Q. Have you had anything to do with it since?—A. No, sir; I have driven several times since, just a week or two weeks at a time, for the other drivers. I never drive for the company, though.

Q. When have you driven since?—A. I do not remember the dates. I have driven, I think, eight or ten times since then, but I do not remember the dates.

Q. And whereabouts have you driven since?—A. From Camp Watson to Canyon and from Burnt Ranch to Rattlesnake and from Camp Watson to Muddy.

Q. When you commenced carrying the mail in September, 1878, how many trips did they make a week?—A. Two.

Q. When you ran from The Dalles to Canyon how long did you take in going?—A. Three days.

Q. Did you travel nights?—A. No, sir.

Q. Then it was two days and two nights, was it?—A. Yes, sir.

Q. You laid over nights?—A. Yes, sir.

Q. At what places did you lay over?—A. At Cross Hollows and Camp Watson.

Q. Now, at that time how many drivers and horses were used between The Dalles and Canyon, three trips?—A. Thirty-four horses and three drivers.

Q. That continued down to July, 1879, when you left?—A. Yes, sir.

Q. Did they run the seven trips at any time while you were driving?—A. No, sir; not while I was driving for the company.

Q. Did they afterwards run the seven trips?—A. Yes, sir; I drove for one of the other drivers while he was sick when they were running the seven trips a week.

Q. Now, so long as you ran, down to July, 1879, was there any change of time in going from The Dalles to Canyon?—A. No, sir.

Q. They kept on the same old time, did they?—A. Yes, sir.

Q. Was there any change in the number of horses and drivers from September, 1878, to July, 1879, between The Dalles and Canyon?—A. No, sir.

CROSS-EXAMINATION.

By Mr. HINE:

Q. How old are you?—A. Twenty.

Q. You are a son-in-law of Mr. Schutz, who has just testified?—A. A step-son.

The COURT. You are not anybody's son-in-law?

The WITNESS. No, sir.

Q. [Resuming.] You have lived in that country how long?—A. Since 1876, I think.

Q. Did you ever drive for any person before you drove this mail in 1878?—A. Yes, sir.

Q. You used to drive for your step-father?—A. Yes, sir.

Q. What is the distance from Camp Watson to The Dalles?—A. One hundred and forty miles, I think they call it.

Q. How many miles an hour were you in the habit of driving?—A. I do not know; I could not say.

Q. How far is it to the first station from Camp Watson towards The Dalles?—A. Eleven miles, when I drove.

Q. How far was it in 1878?—A. Eleven miles.

Q. Did you change horses there in 1878 and 1879?—A. Yes, sir.

Q. How far to the next station beyond?—A. Twenty-three miles.

Q. How long were you in the habit of taking to drive over that thirty-three or thirty-four miles from Camp Watson to the second station with the mail?—A. We started in the morning at 5 o'clock, and got there for dinner at noon.

Q. Then you would change horses again there?—A. Yes, sir.

Q. And you would drive how far that afternoon?—A. Thirty-six miles, I think they call it.

Q. So you drove about seventy-nine or eighty miles that day?—A. Yes, sir.

Q. Is that about the rate that you drove over the whole line of the route?—A. No, sir. That was the longest day's drive we had.

Q. From the second station, what time would you get into The Dalles?

—A. It was owing to how the roads were, and how much of a load we had.

Q. You had a schedule time to go in given to you by the postmistress at The Dalles, did you not?—A. No, sir.

Q. You had to get in at The Dalles at a certain time, did you not?

—A. We got in from four to seven in the evening.

Q. You were compelled to get in The Dalles at a certain time?—A. We always got in in the evening when we got in. We did not have any particular hour set to get there.

Q. You got into Canyon City at as near a regular hour as possible, did you not?—A. Yes, sir.

Q. Now, how much did the mails from The Dalles through generally average?—A. I do not know how much they would average, sometimes there was a good deal of mail and sometimes the mail was very light.

Q. Did you have a through mail?—A. Yes, sir.

Q. How many pouches would be put on at The Dalles to go right through without being opened on the way at all?—A. There was always one, and sometimes two.

Q. Then you had another pouch for the way mail?—A. Yes, sir.

Q. You did not have to take out at these different post-offices these pouches that went right on through?—A. No, sir.

Q. That was called the through mail, was it not?—A. Yes, sir.

Q. You never counted the horses, I presume, that these parties had?

—A. When I was driving them I knew the number of horses then on the road.

. You only knew the horses actually in use from Canyon to The Dalles?—A. Yes, sir.

Q. They had to have a good many extra horses, I presume, did they?—A. I don't know. Probably there were three or four or five extra horses between The Dalles and Canyon.

By the COURT:

Q. Were those included in the thirty-four you spoke of?—A. No, sir; there were thirty-four running horses.

Q. Thirty-four horses in actual use all the time?—A. Yes, sir.

By Mr. HINE:

Q. [Resuming.] Do you recollect the time now that the trips were changed from two a week to three a week?—A. It was the 15th of November, I think; some time in November.

Q. Eighteen hundred and seventy-eight?—A. Eighteen hundred and seventy-eight; yes, sir.

Q. Now, do you recollect of any new horses having been bought at the time of that increase?—A. Yes, sir.

Q. Were four bought from your father at the time of that increase and put on the route?—A. Yes, sir.

Q. And were there two more bought of a liveryman at Canyon at that time?—A. I do not remember that they were bought at that time: I do not think they were bought at the same time.

Q. How soon after?—A. I do not know.

Q. Were they not bought within two weeks of that time?—A. I do not know but what they were; I could not say.

Q. Now, do you recollect of two others that were bought at Canyon called the Jim Clark horses, just about that time; within two or three weeks of that time?—A. Yes, sir.

Q. Now, do you recollect that Mr. Williamson brought down a lot of horses from The Dalles that had been taken off another route and put on this line at this time?—A. I recollect of three.

Q. Do you recollect of three bought of Kellogg, at Baker City, at the time it was increased from two to three trips?

Mr. BLISS. There is no evidence that the witness ever was at Baker City.

A. No, sir; I heard that he bought some horses from Kellogg; I do not know how many he bought.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. What did you mean by a through pouch going right through? Did you mean to Canyon City?—A. Yes, sir; to Canyon.

Q. As to these extra horses that you speak of, you said there might have been four or five?—A. I do not know when they got them. I know they were there within a month or two after I commenced drive.

Q. And continued there?—A. Yes, sir.

Q. Those horses that you remember as having been put on the road there.

Q. How many?—A. There were four put on there that came from Canyon that I know of.

Q. That was after they commenced three trips, was it?—A. Yes, sir.

Q. On the 18th of September, 1878, how many horses were there running between The Dalles and Canyon?—A. Thirty.

By Mr. MERRICK:

Q. How many drivers?—A. Well, the drivers from Baker City and I drove down to the Forks. There were two drivers from The Dalles to South Forks, and the other two drivers drove on past Canyon to South Forks.

By Mr. BLISS:

Q. Then there were four carriers between The Dalles and Canyon; two between The Dalles and South Forks, and two that came from beyond the Canyon to South Forks?—A. Yes, sir.

Q. And South Forks is between The Dalles and Canyon?—A. Yes, sir.

Q. There were four gave their entire time between Canyon and The Dalles; two part of the time east of Canyon, and two part of the time west of Canyon?—A. Yes, sir.

RECROSS-EXAMINATION.

By Mr. HINE:

Q. How do you know that there were thirty horses between The Dalles and Canyon City?

The COURT. You have cross-examined him upon that subject.

Mr. HINE. No; we have it a little confused.

A. I was driving there on the road. I know they were there.

Q. How many stations are between Canyon City and The Dalles?—

A. I think twelve, counting The Dalles and Canyon, too.

Q. How many horses to each station?—A. Well, some places there were more than at others. There were not the same number of horses at all the stations.

Q. Is that as near as you can tell us?—A. Yes, sir.

Q. How many at some stations, and how few at others?—A. There were at some stations, I think, two horses standing.

Q. In addition to those that were on the road?—A. No, sir.

Q. How many were at the larger stations?—A. I don't think there were more than four; I am not positive, though.

Q. What station was that?—A. There were several different stations where there were four horses.

Q. You really do not know very much about it, do you?—A. I don't know anything more about it than I ought to, I expect.

Q. How about horses being used for running extra stations?—A. Well, they used the regular horses running extra stations after a while.

Q. For how long?—A. All the extra stations that I have seen were run with the regular horses.

CLARK S. PIERCE sworn and examined.

By Mr. BLISS:

Question. Where do you live?—Answer. At Canyon City.

Q. How long have you lived there years.

Q. Have you ever had anything to do with carrying between The Dalles and Baker City?—A. Yes, sir.

Q. When did you commence?—A. Several different times.

Q. When did you first commence after July, 1878?—A. I first commenced for Mr. Schutz the 8th of July.

Q. And how long did you work along in the latter part of August.

Q. Then did you work for anybody else?—A. Yes, sir.

Q. Who?—A. I understood it was for Miner, Peck & Co., by the agent that hired me.

Q. How long did you continue then?—A. About two months.

Q. Until what time?—A. Until the 1st of November.

Q. Eighteen hundred and seventy-eight?—A. Eighteen hundred and seventy-eight.

Q. Then did you work after that at any time for them in carrying the mails?—A. Yes, sir.

Q. When?—A. I commenced in February, 1880, and worked to March, 1881.

Q. Prior to February, 1880, did you drive over that route at all?—A. Yes, sir; I made two trips from Canyon to Watson for another driver.

Q. Now, when was it you drove from Canyon to Watson for other driver?—A. The latter part of November, 1869.

By Mr. TOTTEN:

Q. [Interposing.] What was that—that was the latter part of November?—A. The time that I drove two trips from Canyon to Camp Watson.

By Mr. BLISS:

Q. [Resuming.] Do you know when fast time was first commenced upon that route?—A. They had not commenced when I made two trips.

Q. That was the end of November, 1879?—A. Yes, sir.

Q. How soon afterwards did they commence?—A. I think commenced right immediately afterwards.

Q. That was between what places?—A. Between Canyon and Camp Watson.

Q. Do you know when fast time was commenced between City and Baker City?—A. I think it was the 1st of November.

Q. The 1st of November they commenced running Baker?—A. Yes, sir.

Q. When you drove from Canyon to Camp Watson, how many horses did you use?—A. Well, the best driving. Beside that I drove them all together.

Q. You do not know how many horses there were on the two different trips; I cannot say how drive.

Q. You do not know how many horses there were at that time?—A. No, sir; because they went to work for Miner, Peck & Co. From Seattle.

Q. Then after that?—A. There were six more put on about the 1st of October.

Q. That was in 1878?—A. In 1878.

Q. How many drivers?—A. There were two drivers.

CROSS-EXAMINATION.

By Mr. HINE:

Q. I believe you went over the road two or three times under what is called the expedited schedule?—A. Yes, sir; I drove a year.

Q. From what time?—A. From February, 1880, to the 1st of March, 1881.

Q. You knew what the schedule time was, did you not?—A. I supposed that I understood what it was.

Q. What did you understand it was?—A. Seventy-two hours.

Q. You did that work honestly, did you not?—A. Yes, sir; I tried to.

Q. At the time you went to work there the mail was carried in seventy-two hours, was it?—A. Some portions of the time it was not.

Q. What was the reason that it was not carried during that time?—A. Well, we had high water.

Q. Was it carried every time, except when it was prevented by inevitable necessity?—A. I think so.

Q. Whenever it was possible for a man to carry it in that time it was carried?—A. Yes, sir.

Q. How deep does the snow get in those mountains during the winter?—A. Sometimes the snow is deeper than at others.

Q. Is it not necessary to keep a track during the winter in order to carry the mails through there?—A. Yes, sir.

Q. So that the road would be really impassable if the mail was not carried along every day?—A. Unless they had an extra team.

Q. A team to break the road. You carried passengers in 1878, sometimes, did you?—A. Yes, sir.

Q. A fair horse having twelve hours to carry the mails in would carry it thirty miles, would it not?—A. Yes, sir; for one day.

Q. He could not follow it up?—A. He could not follow it up.

Q. On a schedule of four or five miles an hour there would have to be stations at every once in ten or twelve miles I presume. Is that so?—A. We did not have stations that often.

Q. When you did not have the stations so frequently as that did you not have extra stock between the stations?—A. No, sir.

Q. Did you carry the mails all the time the whole length of the stations without having extra stock between them?—A. There was one from Canyon towards South Fork. It was twenty three miles it was carried.

Q. Did you not have three teams there?—A. They had three teams, but they were kept at that station.

Q. Yes, but they had three teams?—A. Yes, sir.

Q. At short stations how many teams did they have?—A. They had the same teams.

Q. Did they have three teams at each short station?—A. Yes, sir.

Q. Did they have two or three at those less frequent stations?—A. There were two stations; first the team went into Canyon and the next time it would run down to the short station.

The COURT. I understand him. The teams which ran over the long stations to-day would pass over the short ones to-morrow.

The WITNESS. Yes, sir; that is it.

The COURT. So that the stations lay at the end of the long route and at the beginning of the short one.

By Mr. BLISS:

Q. When you said you understood the schedule was seventy-two hours and you did your best to make it, what time did you refer to?—

A. From February, 1880, till March, 1881.

Q. When you speak of seventy-two hours in which you say it was done, you refer to your portion of the route, I suppose?—A. Yes, sir.

Q. At that rate?—A. Yes, sir.

By Mr. HINE:

Q. Do you mean to say that you did not carry the mail any faster than you had been in the habit of traveling before that time?—A. No, sir; I don't think we did, because it was a bad road, and we did not travel as fast.

By Mr. BLISS:

Q. From February, 1880 to March, 1881, they ran nights, did they not?—A. Yes, sir.

Q. How many men and horses were there at that time between Canyon and The Dalles, or for that portion of the road that you drove on what portion was that?—A. Towards The Dalles, below South Fork from Canyon down towards The Dalles, forty-four miles.

Q. How many men and horses did you have there?—A. We had two men and twelve horses.

By Mr. HINE:

Q. How many station men were there?—A. There was one specimen.

Q. At each place?—A. One man at the middle to take care of the horses.

Q. One at the middle and one at each end?—A. No; the driver took care of the horses at one end.

Q. How many reserve horses were there between those places?—A. There never was but one on my route, and that was one that was turned out.

Q. It was not your business to know anything about the number of horses on the route, was it?—A. No, sir; I don't know as it was.

By Mr. BLISS:

Q. Would you know how many were used over the portion you drove?—A. Yes, sir.

By Mr. TOTTEN:

Q. How long have you been here?

The WITNESS. In Washington?

Mr. TOTTEN. Yes, sir.

A. About three weeks.

Q. Have you been here twice before this time?—A. No, sir.

By Mr. BLISS:

Q. You have not been here before, have you?—A. No, sir.

Mr. BLISS. I have two more witnesses on this route. One of them is a lady. So far as she is concerned I would not be able to examine her till morning. I can go on with the gentleman witness if you desire it.

The COURT. I think we will hear another witness.

Mr. BLISS. I am mistaken, sir; there are two witnesses more.

The COURT. I will hear one at a time.

EDWIN HALL sworn and examined.

By Mr. BLISS :

Question. Where do you live ?—Answer. Canyon City.

Q. How long have you lived there ?—A. A little over five years.

Q. Do you hold any position there under the Government ?—A. I am postmaster.

Q. How long have you been postmaster ?—A. I took charge of the office in June, 1877.

Q. You know the mail route from The Dalles to Baker City of course ?

—A. I am on that route.

Q. What time did the mails leave Canyon for The Dalles in the fall of 1878 ?

Mr. TOTTEN. That is objected to, your honor. It is a matter of record. So far as we are concerned, his statement is of no account.

The COURT. The objection is overruled.

Mr. TOTTEN. I take an exception.

Mr. BLISS. Go on Mr. Hall. What time did the mail leave Canyon for The Dalles in the fall of 1878; what time in the day ?

A. I do not know that I can remember exactly. I had nothing to do with the time at that time. I would have to tax my memory in regard to it.

Q. Can you remember, or can you not ? It is not very important.—

A. I could remember if I knew how they were running.

Q. When they commenced to run three trips a week over that route, at what time did the mails leave Canyon for The Dalles ?—A. I do not know that I can remember it.

Q. When the mails commenced running daily, can you remember what the time was ?—A. I do not know that I can remember the time. I know they did run a daily.

Q. Do you know when ?—A. I believe they commenced in the summer of 1880.

Q. Do you know when they commenced to run nights ?—A. I think at the same time. I cannot remember.

Q. You do not remember at all ?—A. I cannot remember when they commenced to run nights.

Q. Was the mail from The Dalles to your office opened at Canyon; was it opened at your office ?—A. Of course. Certainly it was.

Q. Was there a mail passed through your office going to Baker City which was not opened, or were the mails all opened at your office ?—A. No, sir; there was no through mail to Baker City. The through mail was from The Dalles to Canyon City only. It was an accommodation pouch to facilitate the time.

Q. When you went there there was a mail coming from Baker City. Was that in the same way ?—A. No, sir; there was no through pouch between Baker and Canyon.

Q. Did the carriers always connect at Canyon ?—A. Sometimes. They did not always connect. Sometimes they were delayed, and did not connect.

Q. Do you know what time in 1878 the contractor under the present contract commenced service ?—A. I think he commenced in September.

Q. September, 1878 ?—A. I think so.

Q. You made a temporary contract with Mr. Schutz, did you not ?—A. No, sir; I made no contract with Mr. Schutz.

Q. You made an agreement?—A. Well, we had a verbal standing.

Q. And he ran it for awhile?—A. I told Mr. Schutz that if he tried the mail, I would do all I could to see that he got paid for it. He made no agreement.

Q. What is the population of Canyon?—A. About four hundred.

Q. Has it grown within the last three years?—A. No, sir; not.

Q. Has it fallen off?—A. I can't say that it has. I think it has about the same during the last five years.

Q. How much mail came to your office in 1878 from The Dalles on an average?

Mr. TOTTEN. I object to that, your honor.

Mr. BLISS. Or from the direction of The Dalles; anything westward, between you and The Dalles?

The WITNESS. From Baker?

Mr. BLISS. No, from The Dalles.

The WITNESS. From The Dalles to Canyon?

Mr. BLISS. Yes, or from the offices between The Dalles and Canyon. How much came there?—A. From the way office offices between, there was not much mail; but from The Dalles received the most of our mail, the important part of our mail.

Q. How much was it?—A. Sometimes we had a canvas sack and sometimes two. Sometimes we had two pouches.

Q. Why do you distinguish between canvas sacks and pouches?—A. The canvas sacks have the newspaper mail.

Q. And the pouches have the letters?—A. Yes, sir; and the registered mail also.

Q. Where does the merchandise go?—A. In the registered mail pouches.

Q. How much mail came to your office from Baker City and intermediate offices between you and Baker?—A. I can't tell how much mail came from Baker to intermediate offices.

Q. No. I mean how much came from Baker City and intermediate offices together to Canyon?—A. The mail from Baker was very light. But from beyond, the eastern mail comes through the office.

Q. Your eastern mail comes through Baker?—A. Yes, sir.

Q. To Canyon?—A. To Canyon City.

Q. Now, did an eastern mail come from Baker City to Canyon or to The Dalles, or did that eastern mail that was going to The Dalles go some other route?—A. That did not come in through the office.

Q. Where did that go?—A. It went around by the way of Pendleton.

Q. [Submitting sketch map to witness.] Please look at this map. Here is Baker City, and here is The Dalles, and here is Canyon [indicating]. The eastern mail that was going to The Dalles came from Baker City up by Pendleton here by this bluff [indicating]?—A. That is the way it was supposed to come.

Q. It did not come through your office?—A. No, sir.

Q. The mail from The Dalles, going to points east of The Dalles, went around by Pendleton?—A. Yes.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. [Submitting a large map to witness, and indicating.] There is The Dalles ; this route runs here, does it ?—A. Yes, sir.

Q. This is the route running around this way, and this is Canyon City, and then it went on here to Baker City [indicating]. Now, from Baker City there is a route running north here, and around here by Pendleton, by here, and so on up here [indicating] ?—A. Yes, sir ; these are routes from Baker City to Pendleton ; but I don't know whether this runs north.

Q. And from Baker City there is also a route running off here, and one down here [indicating] ?—A. I believe there are some small routes there.

Q. You get your eastern mail at Canyon City by way of Baker City ?—A. Yes, sir.

Q. Do you know which of these routes that eastern mail comes over ?

—A. Kelton, I suppose ; my registered mail comes that way.

Q. You know from your registered mail that the mail from the east comes through Baker City, and along over this route to Canyon City ?

—A. Yes, sir.

Q. Now, then, a mail from the east that comes to all points beyond Canyon comes right on through your office ?—A. No, sir ; not all mail.

Q. Where does it come from ; how does it get to these intermediate points ?—A. Some of it goes via Pendleton to The Dalles and comes up as far as Mitchell.

Q. Then the Eastern mail has to go around this way and then come over this route to supply these intermediate offices, or it comes through this way and supplies them [indicating] ?—A. Yes, sir.

Q. [Indicating.] Now, here is a route running away down here, is there not, from Canyon City ?—A. Yes, sir ; to McDermott.

Mr. BLISS. What route is that ?

The WITNESS. That is 44160.

Mr. BLISS. The Fort McDermott route ?

The WITNESS. Yes, sir.

Mr. BLISS. That is the route in Southern Utah which there is so much interest in ?

Mr. WILSON. Are you testifying ? If the court please, I would like to have Mr. Bliss sworn, and I want him to produce some papers when he is sworn. I want to examine him. I intend to call him as a witness myself.

The COURT. We will not have him examined this afternoon.

Mr. WILSON. No, sir ; there is hardly time this afternoon.

By Mr. WILSON :

Q. [Resuming.] Do you make any report to the Post-Office Department as to the arrival and departure of mails ?—A. I do, but not on this route 44155.

Q. Why not on this route ?—A. Because mine is a way office.

Q. Because you only make reports where your office is a terminal office ?—A. Yes, sir.

Q. And yours not being a terminal office, you made no reports to the Post-Office Department as to the arrivals and departures of the mails as to this route ?—A. Only during the time temporary service was performed.

these reports of the revenues of these offices are based upon—They are based upon the mail that goes from my office, and mail that comes to it.

Q. You do not know anything at all about what are the revenues derived from the route, do you?—A. Not that which belong to the revenues of other offices; only that of my own office.

Q. If two or three sacks or pouches are started out from The and come to your office, and are distributed at your office, do they go into your statement of the revenues of your office?—A. No, sir.

Q. And all the mail that came from the east to your office effect upon the revenues of the office?—A. No, sir.

Q. None at all?—A. None at all.

Q. Now, Mr. Hall, in making the reports that you do make of the revenues of your office, to whom do you make them?—A. I make them to the Third Assistant Postmaster-General.

Q. Did you ever make a report of the revenues of the office of the Second Assistant Postmaster-General?—A. Not unless I did so take.

Q. It is no part of your duty to do it?—A. No, sir.

Q. You are not conscious of ever having done anything of the kind?—A. I do not think I ever have, sir.

Q. As you are a postmaster we may get a little information that may be serviceable in another direction. You make your reports of arrivals and departures; to whom do you make those reports?—A. I have to make them I make them to the contract office.

Q. Do you direct them to the inspection division of the Post-Office Department?—A. To the inspection division of the Post-Office Department; yes, sir.

Q. So they go to the inspection division; you mail them to the inspection division?—A. I mail them to the inspection division.

Q. You do not know anything about how they make up the totals and deductions, I suppose?—A. No, sir; I have no knowledge that is done.

The COURT. Adjourn the court.

THURSDAY, JUNE 22, 1882.

The court met at 10 o'clock and 5 minutes a. m.

Present, counsel for the Government and for the defense.

ELIZABETH M. WILSON sworn and examined.

By Mr. BLISS :

Question. You are the postmistress at The Dalles, Oregon, I believe?—Answer. I am.

Q. How long have you been such?—A. Since April, 1873.

Q. Do you know the mail route from The Dalles to Baker City by Canyon City?—A. Yes, sir.

Q. In making up mails at The Dalles for Baker City, or points eastwards of Baker City, were they sent over this route from The Dalles to Baker City by Canyon?—A. They were never sent so.

Q. By what route were they sent?—A. They were sent by a route, the number of which has just past from my recollection, but which went by way of Pendleton.

Q. When you were sending letters from The Dalles to Auburn the first station on the route 44155 west of Baker City, were they sent over route 44155, or around by Pendleton?—A. By Pendleton, sir.

Q. As I understand you, then, no through mail went over that route?—A. Never.

Q. Did you ever receive through mail from Baker City over that route?—A. I do not remember of ever receiving a package; nothing excepting the one letter containing the mail bill from the postmaster at Baker City.

Q. Do you remember when mail bills were put on that route?—A. I think about November 1.

Q. Of what year?

[The witness hesitated for a reply.]

Q. The contract commenced in 1878, you will remember.—A. Then they did not commence until November of that year.

Q. Eighteen hundred and seventy-eight?—A. No; it would be 1879; November, 1879; now I remember.

Q. When a mail arrives at your office, prior to the putting on of the mail bills, have you any way of knowing on what day or what hour it left Baker City?—A. We have no means at all.

Q. You simply know at your office the time the mail arrives there, and the time the mail that you send out leaves there; but you do not know the time the mail leaves Baker City?—A. No, sir.

Q. The putting on of the mail bills was the first means of information you had on that subject?—A. Yes, sir; that was the first means.

Q. Did you ever receive notice that the schedule had been expedited from one hundred and twenty hours to seventy hours?—A. Oh, yes, sir.

Q. Did you ever give any notice to the contractors, or any of their representatives, or make any complaint to them that the mails did not arrive on time?—A. I think I have done so unofficially.

Q. To whom?—A. Well, to whatever agent might have been there at the time; I do not remember whether it was to Mr. Dunlap, or to Mr. Williamson; I think, probably, to Mr. Dunlap; he was often in the office, and if there was anything that I wished to speak to him about, I did so.

Q. Did the mails upon that route usually arrive on time?—A. Well,

there was a great deal of difference between summer and winter. In the winter I think they were almost always a little behind.

Q. What do you mean by a little behind?—A. It depended upon the state of the snow and the roads and everything; sometimes a good deal behind, but that would be on account of some special trouble.

Q. In the summer, did they usually arrive on time?—A. Well, they usually arrived at a regular hour in the summer.

Q. They arrived at a particular hour. Had you any means of knowing whether that was on time?—A. Until the mail bills were put on the road I had no means whatever.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. I understand you have been postmistress there since 1872?—A. No, sir; not so long as that.

Q. What time was it you became postmistress?—A. I think it was April, 1873. I am ashamed not to remember exactly; but I know was not in 1872.

Mr. WILSON. It is not material. I simply wanted to learn the extent of your service and experience.

The WITNESS. In May of this year I commenced my third term.

Mr. WILSON. It is wholly immaterial. It was along in 1872 or 1873.

The WITNESS. Yes, sir.

Q. Was this route in existence from The Dalles to Baker City when you first became postmistress or was it created after that time?—A. It was created after that time; at least the name of the route was different and the number of the route was different. We called it The Dalles and Boise City.

Q. Boise City is away over in Idaho?—A. Yes, sir.

Q. So that this same route was in operation but as far over as Baker City?—A. Boise City was named on our schedule of arrivals and departures as the other terminus of the route.

Q. Do you know how far Boise City is from Baker City?—A. I do not; at least I can only guess.

Q. Some four or five hundred miles?—A. Yes, sir.

Q. So that this route in point of fact as long as ten years ago was four or five hundred miles longer than it is now, and so far as Baker City is concerned it ran over precisely the same line or substantially the same line as it does now?—A. I am not positive about that. I have an impression that the route diverged and a different line was made through the mountains. I am not positive about that.

Q. It was substantially the same line, reaching substantially the same points, excepting it extended five hundred miles further ten years ago than it does now?—A. I do not know that The Dalles and Boise City route ever struck Baker City at all. It may have struck the route further on without going to Baker City.

Q. Now, from the time you went into office in 1873 until these mail bills were put on—what do you call them; mail bills or way bills?—A. Mail bills.

Q. [Continuing.] The postmasters at the terminal points of the route had no means of knowing the time that the mail started from the opposite end of the route to where they were?—A. Only occasionally I had a little curiosity about it and wrote a letter to the postmaster for the purpose of getting an answer and seeing what the date was. I did that occasionally.

Q. That was simply your own private matter?—A. Altogether.

Q. But so far as the public service and the mode of conducting these matters were concerned, there never was any mode devised for giving one postmaster information as to the time the mails started from the other end of the route?—A. We had nothing at all at our office.

Q. And therefore the mail bills, as you understand it, were put on for the purpose of enabling the department to get information on that subject through the postmasters at the terminal points?—A. So I believe.

Q. Do you recollect receiving instructions in regard to those mail bills?—A. I do.

Q. They came through General Brady, did they not?—A. I knew at the time; I do not remember now. I suppose so.

Q. He was the Second Assistant?—A. Yes, sir.

Mr. WILSON. That is one good thing he has done in his life, anyhow.

Mr. MERRICK. You testify that is a good thing, do you?

Mr. WILSON. I do say it was a good thing. Anything that improves the service is a good thing.

Q. Now, you say there was no through mail from your place to Baker City. You mean by that, I presume, mail going beyond Baker City to the east, do you?—A. I mean that if I had a package of letters for Baker City I should not put it in the Canyon City pouch, but I would put it in what I might designate as the Pendleton pouch.

Q. There were pouches that went right straight through from The Dalles beyond Canyon City, without being opened, were there not?—

A. No, sir; not without being opened. Canyon City opened the pouch that we made up.

Q. That went through as far as Canyon City without being opened?—A. Yes, sir.

Q. But Canyon City is a sort of distributing office of other routes coming in there, and mails that were going north or south or east from Canyon City, on other routes, would be put in the Canyon City pouch?—A. Yes, sir.

Q. And that would go straight through. You reported to the department quarterly the arrivals and departures of mail on this route, did you?—A. I did so monthly.

Q. And those reports were true, were they?—A. They were.

Q. And whatever they show in this case we can rely upon as being correct?—A. Yes, sir.

Q. Did you give the department any information in regard to the mode of performing the service on this route except through these regular monthly reports?—A. Well, I remember to have had some difficulty in my mind as to the propriety of my signing those blanks, saying that such mails had arrived from Boise City when I had no ocular demonstration of the fact; and I attached to my report a tag stating the fact that my official signature went to the schedule of arrival and departure as the blank was given to me, but I did not know about the mails upon the further end of the line, where the mails never came through to us. I could not say about that. This was unofficial.

Q. You just attached that to your report?—A. As explanatory; yes, sir.

Q. But your reports as to arrivals and departures are correct?—A. Yes, sir; with that explanation.

Q. And all the information you ever gave to the department in re-

ard to the performance of this service you gave in ...
ave stated ?—A. Yes, sir.

Q. Beyond that you gave the department no information ?—A. Nothing that I can remember now, and I have no reason to think I ever gave any.

Q. You made, on the 1st of July, a contract for temporary service ?—A. I did.

Q. On this route ?—A. Yes, sir.

Q. Mr. Schutz and Mr. Marshbank were the parties who were then carrying the mail, were they ?—A. Yes, sir.

Q. They had been carrying it up to the 30th of June, 1878 ; is that correct ?—A. Yes, sir.

Q. They had stock and carriers on the route to carry the mail with ?—A. Yes, sir.

Q. Are you aware of the fact that prior to the 1st of July, 1878, Miner, Peck & Co., had made a subcontract with a man by the name of Hutchinson to stock that route on the 1st of July, and take up that service ?—A. I was aware of the fact, sir.

Q. They had made all the necessary arrangements, had they ?—A. I could not tell you about that. Mr. Hutchinson was on the ground. I saw him, and saw him repeatedly. I never saw anything more than the man himself. I do not know about his arrangements. I know he was there.

Q. You know they made the contract with him to carry the mail ?—A. Yes ; and he represented himself as being accredited by them.

Q. And he came there for that purpose ?—A. Yes, sir.

Q. He failed to perform the subcontract ?—A. He did, sir.

Q. And that made the contract for temporary service by you a necessity I suppose ?—A. Yes, sir.

Q. And you made your contract with Mr. Hailey, did you not ?—A. Yes, sir.

Q. Mr. Hailey lived at Boise City ?—A. Yes, sir.

Q. About five hundred miles from the terminus of this route ?—A. Yes, sir.

Q. Did he have his stock there to put on service ?—A. Mr. Hailey was a man whom I knew in The Dalles. He was often there, that being one terminus of the route on which he was then carrying the mail. He was there a great deal, and was there with stock on this other route which also terminates at The Dalles, and this temporary contract was made with him.

Q. You made that contract for \$15,500 I think ?—A. Yes, sir.

Q. And he immediately sublet it, did he not ? He did not perform the service ?—A. I do not know.

Q. Do you not remember that he sublet it to Mr. Schutz ?—A. Yes, sir. I saw the man that I saw.

Q. Did he let the mail go ?—A. Yes, sir.

Q. They gave up the temporary contract?—A. Or at least they refused to carry the mail further. I don't exactly remember the terms upon which it was done. Then John Hailey appeared to be the next man. I was telegraphed from the department to make a temporary contract at lower rates than I had before. Whether that was the reason or not I do not know. I simply made a record of the certain facts in the case in regard to the contract, and the reasons for it. I have not retained in my memory any more than I tell you.

Q. The fact is as I have stated it, however, that you made the temporary contract with Mr. Hailey?—A. Yes, sir.

Q. That you did on the 1st of July?—A. No, sir; not on the 1st of July. I do not think it was on the 1st of July.

Q. It seems to be dated the 1st of July; I have it in my hand.

The WITNESS. The contract with Mr. Hailey?

Mr. WILSON. Yes. It is the contract these gentlemen have put in evidence here. That is all I know about it. You seem to have made the contract on the 1st of July.

The COURT. You can show it to the witness.

Mr. WILSON. I will do so; certainly.

Q. [Submitting contract.] You know your signature?—A. Yes, sir.

Mr. MERRICK. Look at the body of the contract and at the whole paper.

The WITNESS. There is no doubt about this contract. This is the one that I made.

Q. And the date is the 1st of July?—A. It is the 1st of July. I had not supposed that it was.

Q. You made a contract for temporary service also on the route running from The Dalles down to Pineville and Lake View, did you not?—A. Yes, sir.

Q. You made that contract for service twice a week, did you not?—A. If the contract is there you can tell. I changed those things so many times I cannot remember.

Q. The service was only let for once a week. How did you happen to do that?

The COURT. You cannot interrogate her about a written paper without exhibiting the paper to her.

Mr. WILSON. Unfortunately the counsel will not let us have it.

Mr. BLISS. Unfortunately it is not in this indictment. We are not called upon to produce the paper, and I have so told Mr. Wilson. I never heard a word about it until I came into court this morning. If he wants it to-morrow morning I will bring it in.

Mr. WILSON. Very well, I will postpone the examination of Mrs. Wilson on that subject until I get the paper.

Mr. BLISS. If you are going to delay the examination I will retract what I said.

Mr. WILSON. I cannot complete the examination without it.

Mr. BLISS. Then, you must get it in some other way.

Mr. WILSON. I will ask the court to direct that the papers be brought in.

The COURT. I suppose you can get the paper.

Mr. MERRICK. They have got as much right to this paper as we have.

Mr. WILSON. I understand Colonel Bliss has the paper.

Mr. BLISS. I have not. I told you an hour ago I have not.

Mr. WILSON. [To Mr. Woodward.] Have you the papers on that route?

Mr. WOODWARD I think I have. I will not be certain.

Mr. WILSON. Please bring them into court to-morrow morning.

Mr. MERRICK. May it please your honor, I want to make a single statement with reference to this matter. Mr. Wilson seems to be laboring under a chronic mental disturbance.

The COURT. [Interposing.] That is personal, now.

Mr. MERRICK. I take that back. Any papers that the other side want, and have not got, they must proceed to get according to law. I say that for the reason that unkind and unjust remarks have been made, especially to one of the counsel in the case, in reference to papers, and unfair innuendoes have been thrown out. Now, I shall decline, and I desire that my associates decline, to answer any questions put by the other side to them personally in the progress of the trial. The same must be put through the court. I shall not answer any question about papers.

The COURT. That is notice to you, Mr. Wilson.

Mr. MERRICK. Let them pursue the legal course.

Mr. WILSON. Mr. Clerk, issue a subpoena to Mr. P. H. Woodward to bring with him all the papers in route 44154, and embrace in that subpoena also all the papers in route 40101. Issue a like subpoena for Mr. George Bliss.

Q. Do you make returns to the department of the revenue and expenses of your office?—A. I do.

Q. How often do you make those returns?—A. Quarterly.

Q. In making those returns what do you take into account? Now for example, is the place you call The Dalles an intermediate station or post-office on any route, or is it a terminal station?—A. Until quite recently it was always a terminal station. Now, I believe, that it is not so, except on one route.

Q. In making up your report to the department of the revenues of your office, I wish you would state to the jury whether you take into account simply those matters that go out of your office. Do you take into account any mail matter that comes into your office from other places?—A. I can tell you exactly what I do, and you will understand then.

Mr. WILSON. Very well; tell us, because I see you are a very intelligent woman.

The WITNESS. I have certain blanks given to me by the department to fill up, and those blanks I actually fill. If I had one of them here I could show the jury exactly what I do.

Q. I simply want to know what you fill it with.—A. First, a statement of stamps, cards, and stamped envelopes on hand at the commencement of the quarter. Second, a statement of stamps, cards, and wrappers, and stamped envelopes received from the department during that quarter. Adding them together, I subtract them from the amount of the material that I have on hand in the office. I add to that the box-rent collected, and subtract from it the salary and clerk hire, and the rest of the expenses.

Q. So that in making up this account of the revenues of your office you only take into account the stamps, cards, and stamped envelopes that you sell?—A. Yes, sir.

Q. And the box-rent?—A. Yes, sir.

Q. And that constitutes the receipts of your office?—A. Yes, sir.

Q. And that is all that you forward to the department?—A. Yes, sir.

Q. So far as the revenues of the office are concerned?—A. Yes, sir.

Mr. HENKLE. She deducts the actual expenses.

Mr. WILSON. I do not care about the deduction. Of course, from that is deducted the expenses of the office.

Q. Now, what becomes of all the mail matter that goes into your office, where the letters are prepaid and the papers, &c., are prepaid? Your office keeps no account of that, does it?

The WITNESS. Of that mail that is in transit?

Mr. WILSON. That mail that comes to your office for distribution at your office, or passes through it to other points?

A. No, sir.

Q. You have no account of that at all?—A. No, sir.

Q. So that the number of stamps that you sell and cards and the box-rent gives no correct idea of the magnitude of the business of your office?—A. I think it does not, sir.

Q. Now, let me call your attention to another matter. Is there any newspaper published at The Dalles?—A. Yes, sir.

Q. How large a county is that in which The Dalles is situated?—A. I am not very good at remembering square miles. It is a very large county; a very large county.

Q. And a great many people live in it?—A. Not so many people as mountains.

Q. It is a pretty mountainous country?—A. Yes, sir.

Q. Are there a good many miners along through there?—A. Not very many in Wasco County.

Q. Do the people up there take that county newspaper?—A. Yes, sir.

Q. Does that paper go out through the mails?—A. Oh, yes, sir; all of them.

Q. There is no revenue derived from them is there?—A. No, sir.

Q. Yet that paper circulates through that county?—A. Yes, sir.

Q. I understood you to say that there never was a mail bill for the purpose of indicating the arrivals and departures until the administration of General Brady?—A. Yes, sir..

Q. In 1879?—A. Yes, sir.

Q. There never was anything of the kind?—A. No, sir.

Mr. WILSON. I am through with the examination until we get these papers.

By Mr. HINE :

Q. What time did Mr. Schutz and Mr. Marshbank refuse to carry the mail?—A. [Referring to memorandum.] On the 28th of August we had a half trip.

Q. What year?—A. Eighteen hundred and seventy-eight.

Q. They had been carrying the mail for a year or two before July 1, 1878, and carried it down to August 28, 1878, did they?—A. Their names do not appear as contractors all that time.

Q. I ask you for a fact, did not Schutz and Marshbank carry the mail prior to July 1, 1878, and did they not carry it down to August 28, 1878?—A. I am not positive as to whether they were the carriers all that time or not. They were a large portion of the time. I would not say that they carried it every trip.

Q. Mr. Marshbank resides at The Dalles does he not?—A. He did at that time.

Q. Do you not know that he had been carrying the mails for months, or a year or more before July, and up to July 1, 1878?—A. I believe I do. My general remembrance is that he was the carrier, but how long

or whether he carried it steadily or employed some other person, I do not remember.

Q. He was carrying it for \$1,000 per year, was he not?—A. I do not know.

Q. Did he continue to carry the mail right along from July 1 to August, 1878?—A. I have no memoranda that I can refresh my memory with. I do not know whether he carried it continuously or not.

Q. Did Mr. Hailey put a single animal upon that route himself?—A. I do not even know that. Mr. Hailey's stock was along upon the route commencing at The Dalles. He may have moved his horses without my knowing anything about it.

Q. Did you offer to let the route to Mr. Marshbank or Mr. Schutz, or both of them?—A. I don't remember what I offered to do.

Q. Did you know that the postmaster at Canyon City had verbally contracted the route to Mr. Schutz at \$1,000 per year?—A. I did not know it.

Q. How soon did you learn that Mr. Schutz had made a contract, as he supposed, with the postmaster at Canyon City?—A. I do not remember of ever knowing it. Canyon City was not the head of the route. The Dalles was the head of the route.

By Mr. BLISS:

Q. Under the regulations of the Post-Office Department, the postmistress at the head of the route was the only person entitled to make a contract, is not that so?—A. I so understood it.

Q. [Submitting a paper to witness.] Please look at this paper which bears the stamp July 26; is that the stamp of your office?—A. Yes, sir.

Q. Now read that, in connection with the temporary contract shown you, and tell us when you actually made the temporary contract with Mr. Hailey.—A. I have no remembrance whatever upon those things. I have too many dates to deal with to remember them at all. I do not trifle with them. They are all matters of record in my office or elsewhere.

Q. You see that this paper is stamped the 26th of July?—A. Yes, sir.

Q. And it reads—

Mr. WILSON. [Interposing.] Oh, no; oh, no.

Mr. BLISS. It is in evidence and has been marked 2 D. [Reading.] "I this day entered into a contract."

Q. [Resuming.] What do the words "this day" refer to?

Mr. TOTTEN. We object to that. It is for the purpose of altering this paper, I think.

Mr. BLISS. Not at all.

A. The words "this day" mean July 26. I know that.

The COURT. It is always competent by extraneous evidence to show actual dates.

Q. [Resuming.] Now, Mrs. Wilson, as to that contract with Hailey, it might have been made subsequent to the day it is dated, might it not?—A. No, sir.

Q. You think not?—A. No, sir.

Q. That contract with Hailey was independently of this one you admitted here?—A. I think that has to do with a matter—

Mr. WILSON. [Interposing.] I see just precisely what it is.

The WITNESS. I think I can explain it.

The COURT. Allow Mrs. Wilson to give her views.

A. [Continuing.] I only state with reference to this matter by way

Explanation that it occurred by my making a contract at one amount the time and the department refusing to sanction that amount and insisting upon it being lower. That is my memory of the matter; that one time it was \$15,500, and that I received word from the department that it could only be let at \$14,000. I think that is the explanation of it.

Q. [Resuming.] Now, let me show these papers already in evidence, marked 3 D and 4 D; one dated July 25, 1878 [submitting a paper to witness]; the other dated August 26, 1878 [submitting another paper to witness]. One is a notice of performing the service under a contract at the rate of \$15,500 a year, which is marked 3 D, and 4 D is of performing the service under a contract at \$14,000, both signed by you. At the time you knew a route as the Boise City route, did you send mails to Boise City over this route?—A. Never.

Q. Did you send mails beyond Baker City over that route at that time?—A. No, sir.

Q. The mails, as I understand you, therefore, came to your office over our route only from offices further west than Auburn. Is that true; did the Auburn letters come to your office over this route?—A. The Auburn people did not write to The Dalles people at all.

Q. Baker City letters did not come?—A. No, sir.

By Mr. TOTTEN:

Q. I did not hear that remark of yours, Mrs. Wilson. Please repeat it.

A. I do not remember particularly in regard to Auburn letters coming. I never saw one that I remember.

Q. You say that the Auburn people did not write to anybody in The Dalles?—A. If they did, I cannot remember it now.

Q. Did you say that?—A. Auburn is a very small place and very inconsiderable.

Q. I was trying to find out what you said.

Mr. BLISS. I believe you are not examining this witness, Mr. Totten.

The COURT. But the witness has made an answer to a question, and I understand it Colonel Totten desires to know precisely what that answer was.

Mr. TOTTEN. I did not hear the answer. She did not speak loud enough.

Mr. BLISS. Mr. Wilson is examining the witness on that side.

The COURT. Well, the counsel has a right to hear all that the witness says.

Mr. BLISS. He hasn't any right to ask questions. Mr. Wilson is asking the questions.

Mr. TOTTEN. Well, I want to know what the witness said. Will your honor let the stenographer read the answer.

The COURT. The stenographer may read it.

The STENOGRAPHER. [Reading.] "A. The Auburn people did not write to The Dalles people at all."

Mr. TOTTEN. It is fortunate that we have a stenographer.

The WITNESS. That was a hasty answer, and I should wish to take it back.

By Mr. BLISS:

Q. You do not know of their writing to the people of The Dalles?

The COURT. [To the witness.] Mrs. Wilson, you may correct your answer in your own way.

A. I don't remember of mail coming by way of Canyon City from Auburn.

By Mr. WILSON:

Q. How many contracts did you make for temporary service with Mr. Hailey?—A. I do not remember of but two.

Q. We have one here dated the 1st of July, which you say is right. You made that contract?—A. Yes, sir.

Q. And on the 15th of July it appears to have reached the department, because it bears the department stamp on that day. Do you know how long it takes a mail to come from The Dalles to the city of Washington?—A. Well, I know within certain hours.

Q. Well, reasonably?—A. I always gave two weeks; but it does not always take quite two weeks. I never expect a response under two weeks.

Q. Do you mean to say that a letter comes here and goes back to you in two weeks.—A. Oh, no, sir.

Q. It takes two weeks to get here?—A. I give it that time, but it does not always take so much.

Q. Generally about two weeks?—A. Or a little less; thirteen days.

Q. Here is a contract dated the 1st of July and received in the department on the 15th, so that that cannot be the contract that is referred to by you in this other paper, shown to you by Colonel Bliss, which bears your stamp of the 26th of July?—A. No, sir.

Q. So there must be another contract somewhere?—A. Well, I do not understand it.

Q. Let us see if you will not see that there is another contract.

The COURT. She said there were two contracts.

The WITNESS. I said there were two.

Mr. WILSON. [To Mr. Bliss.] Let us see the other one now.

Mr. BLISS. I haven't it.

Mr. MERRICK. [To Mr. Bliss.] Do not answer any questions about papers.

Mr. WILSON. If your honor please, I want to see the contract.

The COURT. Get out your subpoena.

Mr. WILSON. [To Mr. Woodward.] Mr. Woodward, have you that contract?

Mr. MERRICK. [To Mr. Woodward.] Mr. Woodward, don't answer that question.

Mr. WILSON. [To the clerk.] Issue subpoenas for Mr. Woodward, and Mr. Bliss, and Mr. Elmer.

The COURT. [To Mr. Bliss.] Let them have it.

Mr. BLISS. The contract is not here, and I have never seen it. My best information is that there is no such contract, and my best impression is that when the department refused to approve of the \$15,500 contract an arrangement was made with Mr. Hailey and communication was made in that way, and that is the only record information on the subject. At any rate, I have never seen it, and I speak of it after having made a careful examination to find it. I will be put under oath if it is desired.

The COURT. We will get along more expeditiously if we give and take a little.

Mr. WILSON. These gentlemen have had these papers for a year. We find this condition of papers here. Is it to be wondered at that we are led to the conclusion that there are two contracts.

The COURT. He says there are two contracts.

Mr. WILSON. Exactly ; and now they say they haven't got the contract.

Mr. BLISS. Mr. Brady was Second Assistant Postmaster-General for the time after that contract was made.

Mr. WILSON. What do you mean by that ?

Mr. BLISS. I mean he had charge of the papers just as much as we

Mr. MERRICK. [To Mr. Bliss.] You are not bound to answer that.

Mr. WILSON. [To the clerk.] Issue a subpoena for Mr. Bliss and for A. Elmer.

Mr. BLISS. Of what earthly importance in this case can the subcontracts be ? We put them in as showing that this contractor on this date did not commence service at the time he was required to, and did not commence it down until somewhere about the 5th of September. We prove that also by the carriers. That is all the pertinency of these temporary contracts, whether there is one or fifty.

The COURT. The contract of the 1st of July, I can very easily see, might have been allowed to stand with the simple alteration of the amount of compensation.

Mr. WILSON. I can see that. But Colonel Bliss has intimated that because General Brady was for a part of this time Second Assistant Postmaster-General, he must have stolen these contracts off these files. That is what his language must have meant, and it never meant anything else. I want these files searched, and I want the gentlemen to answer whether they were ever on these files.

The COURT. You have taken the right way. Put them under oath.

Mr. WILSON. I will put them under oath.

Mr. MERRICK. You have intimated it is on the files. Issue your subpoena and we will produce it if we have it.

By Mr. DICKSON [the foreman] :

Q. You testified that you received a telegram from the Post-Office department instructing you to make temporary arrangements for transporting the mail over this route at lower rates.

The WITNESS. Did I say telegram ?

Q. Yes, madam. I was about to ask from whom did you receive that telegram ?—A. I am not certain whether it was a telegram. It was a command.

Q. From whom ?—A. I haven't it with me ; I cannot tell you. But it was apparently from the usual person with whom I transacted all my business in the department. I do not remember the name.

Q. Who was the official from whom you received your instructions ?

A. I think Thomas J. Brady at that time.

Mr. TOTTEN. I little louder, Mrs. Wilson, if you please.

The WITNESS. I do not remember the name.

Mr. WILSON. [To the clerk.] I wish a subpoena issued for R. A. Elmer to produce the telegraph book covering the months of June, July, August, and September, 1878.

The WITNESS. If I said telegram, I should have used some other word that would cover a letter, if it were done by letter.

By Mr. MERRICK :

Q. You do not remember how you got it ?—A. No, sir ; but I believe it was by letter.

Q. You *believe* ? You don't recollect ?—A. No, sir.

Mr. WILSON. [To the clerk.] Issue the subpoena for Mr. Elmer to bring also the letter-book for those months.

Mr. DICKSON. [To the witness.] You said telegram in your testimony.

A. I should not have said that. If it was said, it was said inadvertently.

By Mr. WILSON :

Q. I will ask you, Mrs. Wilson, whether you did not get both a letter and a telegram ?—A. It is quite possible that I did ; I do not remember.

Mr. WILSON. [To the clerk.] Make that subpoena cover the telegraph book and the letter-book also.

SAMUEL R. ROSS sworn and examined.

By Mr. BLISS :

Question. Where do you live ?—Answer. I live at Baker City, Oregon.

Q. How long have you lived there ?—A. I have lived there since April, 1870—twelve years.

Q. Have you, at any time, had anything to do with the carrying of the mail on any portion of the route out from Baker City towards Canyon ?—A. Yes, sir.

Q. At what time ?—A. I commenced carrying that mail May 1, 1879.

Q. How long did you carry it ?—A. I was employed in carrying it until the 15th of May, 1880.

Q. How far did you go from Baker City out ?

The WITNESS. When I first commenced, do you mean ?

Mr. BLISS. Yes, sir.

A. When I first started I drove to Granite Creek.

Q. How far was that ?—A. I do not know the exact distance. We call it forty-two miles.

Q. When did you cease to drive to Granite, and drive to some other place ?—A. I stopped driving there the 1st of November, 1879 ; somewhere from the 1st to the 10th ; I would not say just what the date was.

Q. And where after that did you drive ?—A. In the month of November I drove from Baker City to the middle fork of John Day.

Q. Where did you drive in December ?—A. In December I commenced to drive what was termed the swing drive, in and out of Baker City. I went out to Deer Creek, twenty miles.

Q. When you first commenced to run to Granite Creek, how many trips per week did you make ?—A. Two trips into Granite and one to Fort Sumpter. Only two in Granite each week, and one trip outside each week. I made the trip from Baker to Fort Sumpter. Then I met the Canyon mail and brought that back. The Canyon mail met me at Sumpter then. On the other two trips I ran into Granite.

Q. How long did you take to run to Granite ?—A. I left Baker City usually about 6 o'clock in the morning, and got to Granite from five to six o'clock in the evening, when the road was good.

Q. And laid there over night ?—A. Yes, sir.

Q. And went back the next day ?—A. And went back the next day ; yes, sir.

Q. When you were running to Granite, how many horses did you have ?—A. I used six horses.

Q. Any extras ?—A. One.

Q. And yourself as driver ?—A. Yes, sir.

Q. Was there any other driver?—A. Running in to Baker there was not.

Q. Now, when you went to Sumpter, was there any change in the number of horses?—A. Not running into Sumpter; that was, at the same time, on the same drive that I was driving into Granite.

Q. There was no change there?—A. There was no change there. Well, I just used four that day.

Q. Now, when you commenced in December, running to the middle fork, or whatever you call it—

The WITNESS. [Interposing.] The middle fork of John Day.

Q. [Continuing.] How far was that?—A. We call it fifty miles; I do not know the exact distance; I presume it is fifty miles.

Q. And how many horses did you use in that?—A. At that time we were running seven teams a week; I used eight horses.

Q. Any extras?—A. We had one extra for two drivers. There was another driver running alongside of me. We had sixteen horses.

Q. Sixteen horses on that portion of the route?—A. On that route.

Q. From Baker City to Middle Fork, three trips a week?—A. Yes,

Q. Was that number increased up to the time you left?—A. No, sir; the number of horses was not.

Q. Was the number of drivers?—A. The number of drivers was increased one during the time I was on the road, after that, in December.

CROSS-EXAMINATION.

By Mr. HINE:

Q. You have spoken of Granite. In which direction is Granite from Baker City?—A. It is very near west of Baker City.

Q. In which direction is Sumpter from Baker City?—A. West; in the same direction.

Q. How far is it from Baker to Granite?—A. We always call it forty miles.

Q. How far from Baker to Sumpter?—A. Twenty-eight miles it is called.

Q. How far is it from Granite to Sumpter?—A. We consider it from Sumpter to Granite fourteen miles. That is what I was told it was.

Q. How far is it?—A. Fourteen miles is what I consider it.

Q. In which direction is Granite from Sumpter?—A. West.

Q. Right west?—A. I don't say it is due west, but it is very nearly west. It is in a western direction.

Q. [Forwarding a sketch map to witness.] I send you a map and ask you if this map is correct? You will find Baker City down in this corner [indicating], and you will readily find Granite and Sumter on that map.—A. [After examining the map.] I do not see Granite Creek marked here.

Q. Look off northwest from Sumter, perhaps you will see it.—A. It is not marked here; I don't see it.

Mr. TORTEN. Mr. Witness, you will find Granite Creek beyond Canby City.

Mr. BLISS. [Approaching the witness-stand and indicating.] Isn't that it?

Mr. TORTEN. Sit down, Mr. Bliss.

The COURT. Who is ordering here?

The WITNESS. I see it. If I understand that map, and I do not that I understand it exactly, I do not think Granite Creek is in right place. There is more than one Granite in that country.

Q. [Resuming.] Is that Granite marked on that map the Granite Creek you went to?—A. Not according to this map.

Q. How long did you carry the mail from Baker City to Granite Creek?—A. From the 1st of May till the 1st of November.

Q. From the 1st of May of what year?—A. From the 1st of May, 1879, to November of the same year.

Q. Was that considered in the route from Baker City to Canyon City and from there to The Dalles?—A. My understanding of it was that that post-office belongs to the contract, but I don't know anything about it. That was my understanding simply. I was instructed by the agent there to drive that way. That is all I know about it. I do not know anything about what the contract was.

Q. There were two of you who took the mails out of Baker City the same day?—A. No, sir; not when we drove three times a week. When we were driving into Granite three times a week I was the only driver running into Baker. I was the only driver until the 15th of July, or about that time.

Q. Did you also run to Robinsville?—A. I did not go to Robinsville; no, sir.

Q. Who did?—A. At the time I first drove, the mail was packed to carry to Robinsville, I think, horseback. There was a boy carrying it. I don't know what his name was.

Q. You delivered the mail yourself to the carrier that went from Granite?—A. I delivered it to the Granite Creek post-office. I do not know further than that.

Q. Do you know whether or not Robinsville was on that route? A. It was counted on that route at that time.

Q. The Baker City and The Dalles route?—A. My understanding was that the company was furnishing the mail at that time.

Q. How far did you say it was from Middle Fork to Baker City?—A. We consider it fifty miles. I think it is a good fifty miles myself.

Q. [Forwarding same sketch map to witness.] I will send you this map, and ask you to find it on this map if you can.

The COURT. Find what?

Mr. HINE. Middle Fork.

A. [After examining the map.] I do not see Middle Fork marked.

Q. Is Middle Fork a mail station?—A. It is what we term a stage station. There is no post-office there. It is not on this map.

Q. Will you look at that map now from Baker City to Canyon and tell the jury whether it is correct?—A. I could not tell you anything about the map. I couldn't tell you anything further than that Middle Fork of the John Day was as far as I have gone on the road.

Q. Is it correct as far as you have gone on the road?—A. All on the map that I can see that I recognize is Sumter. That is as far as I went on the road that there is any station that I know anything about.

Q. So far as you have traveled over the route, will you state to the jury whether that map is correct?—A. Auburn and Sumter are marked here correctly so far as I know. If I understand the map from Baker City, those two stations are marked; but Granite Creek is a little out of the way, I should think, according to my judgment.

Q. How much out of the way?—A. I couldn't tell.

Q. One half?—A. I don't think it is exact.

By Mr. BLISS :

Q. Is Granite Creek marked on the map at all?—A. It is not on that map at all.

Q. There is a Granite above there. Is there any Granite Creek marked on that map?—A. I do not notice any Granite Creek.

By Mr. HINE :

Q. I speak of Granite, the post-office, you went to.—A. I don't know the name of the post-office. I think, though, it was Granite Creek post-office.

Q. Do you know whether the post-office was called Granite Creek post-office or Granite?—A. Granite Creek post-office, I think.

Q. Do you find any Granite Creek post-office marked on this map?—A. I do not. I am not positive it was Granite Creek, but that was my understanding.

Q. Your recollection is not very good, then?—A. As regards that office I never paid any attention to it, and I don't know the exact name.

By Mr. BLISS :

Q. This was in the fall of 1879, was it not?—A. It was in 1879 that I was driving to Granite Creek.

Q. You don't know whether Granite Creek was a post-office in the spring of 1879, do you?—A. In the spring of 1879 I was not on the road.

Q. If it was not a post-office it would not properly appear on a map professing to date from the spring of 1879?—A. It was a post-office in May 1879.

Mr. HINE. I object to the question. They produce these maps for the purpose of some use, either for or against us. If they are of any use they should delineate the line correctly, and that delineation should be to represent the time that they complain of, during which we did not do right. Now, if they foist upon the court and jury a map representing the route for a time since they complain of any wrongdoing, then they ought to say so and withdraw the map.

Mr. MERRICK. Your honor, that statement——

Mr. HINE. [Interposing.] I withdraw the word "foist."

Mr. MERRICK. I think it would be better if it were withdrawn, and I think it would be best if the whole speech were withdrawn. Your honor, we brought them a map showing the way it was actually run, and because it did not conform to the map of the post-office of 1879, they complained of it and required the maps to be made according to the map of 1879.

Mr. BLISS. I call your honor's attention to the fact that we put this map in distinctly :

Q. It is a correct transcript of that? [Referring to the post-office map.]—A. Yes, it is; the service as shown on March 1, 1879.

Now they undertake to show it is incorrect, by showing it as it was in the fall of 1879.

Mr. HINE. All we ask is for them to bring us maps laid down during the time of the contract. If there are any changes let the changes be shown. Let us have a fair open field here with the maps spread before us, so that we can determine by our eyes for ourselves.

The COURT. The jury have the evidence as to this map, and they may judge whether it is correct or not.

JOHN M. FISK recalled.

By Mr. BLISS:

Question. When you were running on that route, 44155, did always connect with the carrier who carried the mail from the e your trip into Baker City?—Answer. No, sir.

Q. Can you recall any days when you did not so connect?—A. did not connect one trip; it was the second, third, or fourth of A 1879.

Q. Where did that failure to connect occur?—A. At Granite C

Q. From where did you run to Granite?—A. From Canyon City

Q. By how much did you fail to connect; how much after the did you arrive there?—A. I was sixteen hours late.

Q. When you got there the carrier had gone, had he?—A. He Mind, I was not sixteen hours behind his departure from that o but I was sixteen hours behind my time of going to that office.

Q. How much were you behind his time for leaving that office? I was about eight hours—ten probably.

Q. Therefore, on that trip he got no mail coming from the west of Granite Creek?

Mr. HINE. I object to that question, your honor.

Q. [Modifyingly.] So far as you know?

Mr. HINE. I object to that question.

The COURT. It is objectionable in form.

Mr. BLISS. Very well, sir.

Q. [Resuming.] So far as you know, did he on that trip receive mail from any place west of Granite Creek?—A. No, sir.

Q. You have seen a petition here with the words “seventy-two how interlined, have you not?—A. I do not remember. I have seen it sin have been in Washington.

Mr. HENKLE. You showed it to him, Mr. Bliss, and he said he not recognize the hand.

Mr. HINE. [To the witness.] You have seen it since you have in the city?

The WITNESS. I think I have.

Q. [Resuming.] Do you remember whether you recognized the writing of the interlineation?

Mr. WILSON. Oh, no; that is not the question, your honor.

The COURT. Show him the paper.

Q. [Submitting paper to witness.] My question is directed “seventy-two hours” interlineation.—A. I do not know that h ing.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Where did you start from on your carrying; where headquarters, so to speak?—A. My headquarters were Cany

Q. Now, which way did you go from there?—A. I went e

Q. You went towards Baker City?—A. Yes, sir.

Q. And where did you say you met this through carri Granite Creek two trips in the week and one trip at Sumte

Q. So that this through carrier started out from Baker C —A. Yes, sir.

Q. And he came out to Granite Creek?—A. Yes, sir.

Q. Then, he took your mail, and you started out for Cai

Q. So you came together at Granite Creek ?—A. Yes, sir.

Q. Then he would take your mail and go back to Baker City, and you would take his mail and go on to Canyon City ?—A. Yes, sir.

Q. You say there was one occasion when he did not get your mail, and you did not get his, or which was it ?—A. He did not get mine.

Q. You were sixteen hours behind time ?—A. Yes, sir.

Q. And he had gone ?—A. His general time to start was about 6 o'clock in the morning, and he might have been a little later waiting for me that morning. I could not say how long he had been gone; suppose he would leave at 6 o'clock. I got there a little after 2 in the afternoon.

Q. And how many times did you say that occurred ?—A. That was but once at Granite Creek.

Q. Did you communicate that fact to the Post-Office Department ?—A. I disremember whether I did or not.

Q. How long did you say you were carrying there ?—A. I think I left Baker City with the mail on the 9th of September and then carried it along up to the 15th of April, 1879. I worked from September, 1878, until the 15th of April, 1879.

Q. What was the cause of your detention that time ?—A. Snow.

Q. How deep was the snow ?—A. It varied in different places.

Q. Just tell us, now, the condition of that road, and whether it was known there that the roads were blocked up with snow ?—A. Yes, sir; it was generally known.

Q. And there was no certainty how soon you could get through with the mail, was there ?—A. No, sir; I did my best.

Q. You did your very best ?—A. I did.

Q. Tell us about how deep the snow was, please—the deepest you encountered ?—A. There were about five miles where it was about seven feet.

Q. How many miles an hour could you go through seven feet of snow ?—A. That would be a very hard question to answer.

Q. Now, you know that country pretty well; you have lived in it ?—A. Yes, sir.

Q. I want you to state to the jury whether there was anything unreasonable in that carrier not waiting for you to get through, knowing the condition of the road, being blocked as it was by snow.

Mr. BLISS. I object to that, sir. As to the unreasonableness.

The COURT. The objection is sustained.

Mr. BLISS. We do not put in the evidence at all on that theory.

Mr. WILSON. Upon what theory do you put it in then ?

Mr. BLISS. It is put in to show that there was one trip, at least, on which there was no connection, and yet this contractor got the record at Baker City of having brought the through mail there.

Mr. WILSON. Very well; if he got the record of having brought the through mail there, that record was made up and came to the Post-Office Department, and it is not our fault. We answer from the records.

Mr. BLISS. It was not Mr. Brady's fault.

Mr. WILSON. Very well; it is not our fault, and it is not competent evidence as against him.

The COURT. The report is made by the postmaster.

Mr. WILSON. Certainly; that is what the department goes by.

The COURT. Then it is not worth while to talk about it.

Mr. BLISS. It is evidence against some of the contractors if it is not evidence against Mr. Brady.

Mr. HINE. Mr. Bliss ought to know that there was a deduction two hundred and sixteen or eighteen dollars for that very quarter.

Mr. BLISS. But there is no deduction for that day.

The COURT. Under the circumstances the man did his best, and suppose they ought not to dock him.

Mr. BLISS. If they undertake to claim that the reports show a prompt arrival on time there, this is simply showing a case where they did not arrive promptly and where the reports show there was no prompt arrival.

Mr. HINE. They attempt to prove that this deduction ought to have been made because it was an act of God, and Mr. Brady was conspiring about this matter. We spent five times as much money to get through there as the mail was worth.

Mr. BLISS. On that day?

Mr. HINE. Yes.

Mr. BLISS. It is not so.

Mr. HINE. It is so.

By Mr. WILSON:

Q. Give us that day?—A. I think, as near as I can remember, it is the third day of April, 1879.

By Mr. HINE:

Q. Eighteen hundred and seventy-eight or 1879, do you mean?—A. Eighteen hundred and seventy-nine.

GEORGE F. STONE sworn and examined.

By Mr. BLISS:

Question. What is your occupation?—Answer. I am an inspection clerk in the office of the Second Assistant Postmaster-General.

Q. How long have you been such?—A. Since the 1st of July, 1881.

Q. As such, have you charge of the inspection files showing deductions?—A. I have at present. [Submitting papers to Mr. Bliss.]

Q. Have you made any examination to see whether upon route 44 there was, between the 15th of November, 1878, and the 1st day of November, 1879, any deduction for failure to make expedited time that route?—A. I have discovered no deduction made for loss of expedition.

Mr. INGERSOLL. I object. My objection is that it is not sufficient to prove that. They must show that the postmaster notified the contractor.

The COURT. The effect of the fact is another thing.

Mr. INGERSOLL. I will just read to the court this rule of the office.

The COURT. I understand that. What the fact will amount to will be determined by that rule of the office.

Mr. INGERSOLL. Just let me read this rule; it is short. [F

Failures of mails to arrive at the ends of routes and other points with time cannot but be known in all cases to contractors or their agents. No notice, therefore, is necessary to be given to contractors of failures to arrive at any particular contract time, as reported by postmasters to the department; but when a failure is caused by the neglect of a carrier employed by the contractor, the postmaster shall notify the contractor of the failure, and require him to take measures to prevent recurrence.

I want to call their attention to the fact that they must

cannot tell but that it was done

Mr. BLISS. The evidence is to show that these parties took some eighteen or twenty thousand dollars out of the Treasury for service at they never performed.

Mr. INGERSOLL. You won't prove a cent of it unless you do better in the future than you have done in the past.

Mr. BLISS. May be not.

Q. [Resuming.] You found no deduction?—**A.** I did not.

The COURT. The expedition took effect the 15th day of November, 1878.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. How long have you been engaged in this inspection division?—**A.** I have had charge of this particular section since April 1, 1882.

Q. How long have you been engaged in that kind of service?—**A.** I have been in the inspection division since I came into the department.

Q. How long ago was that?—**A.** July 1, 1881.

Q. And you have only been there since July 1, 1881?—**A.** That is all.

Q. Are you familiar with the mode of doing business in the department in that division?—**A.** To a certain extent.

Q. What are the methods by which you ascertain what deductions are to be made from the pay of the contractors? Describe that to the jury.—**A.** The deductions are based upon reports received from postmasters at the terminal points—the regular report received from those postmasters, and upon any special report that may be received from postmasters at intermediate offices.

Q. Then the postmasters at the terminal points make reports as to the manner in which the service is performed by the contractor—the arrivals and the departures. Is that correct?—**A.** Yes, sir.

Q. How then do they make those reports?—**A.** They send in monthly reports.

Q. To whom do the postmasters at the terminal points send these reports?—**A.** They should be addressed to the Second Assistant Postmaster-General, inspection division.

Q. Are they usually so addressed?—**A.** They are.

Q. Now, when they come into the Post-Office Department, what is done with them; they are addressed, you say, to the Second Assistant Postmaster-General, inspection division; where do they go after they get into the Post-Office Department?—**A.** They are taken to the mail-room of the inspection division to be opened.

Q. They are not taken to the Second Assistant Postmaster-General to be opened by him, are they?—**A.** I do not suppose they are opened by the Second Assistant in person.

Q. Exactly; but they go to the mail-room?—**A.** They go to the mail-room.

Q. And they are there opened, and from there sent directly to the inspection division?—**A.** They are opened in the mail-room of the inspection division.

Q. They are first carried, then, into the inspection division?

Mr. BLISS. I am going to make objection to this as proving the course of practice in the department. This witness did not come into the department until after Mr. Brady went out. I think they should be confined to the practice of the office while Mr. Brady was there, at least.

The COURT. This is your witness.

Mr. BLISS. I did not prove the practice of the department.

The COURT. You called him to ascertain whether he made an examination of the records of the department?

Mr. BLISS. That is all.

The COURT. And to see whether he has not discovered something the records?

Mr. BLISS. That is all.

The COURT. I think this is not a strained cross-examination.

By Mr. WILSON:

Q. [Resuming.] All these reports are carried directly to the room of the inspection division, and then they are opened, not have gone in person to the Second Assistant at all?—A. I think the general mail is first distributed in some other room, and the inspection division mail separated and sent to the inspection division unopened.

Q. That is what I mean. You give it a little more in detail. Now when you get these reports, then you proceed to charge up to the contractor all his delinquencies in the way of carrying the mail as shown by these arrivals and departures as reported?—A. At the end of quarter.

Q. And the department has no other means of knowing whether a contract is being performed according to its requirements, except these registers, and such special reports as may have been made?

The WITNESS. Are you referring to the present practice?

Mr. WILSON. I want to know what the practice was before you came in there.

A. At present on certain expedited routes there is a mail bill in addition to these monthly reports.

Q. I am glad you mentioned that mail bill, because if there is any credit in that [to the counsel for prosecution] you are entitled to it. Then, before the mail bill was introduced, these are the means by which you ascertained whether or not the contractor was delinquent, and entered up the amount which he had charged for that delinquency?—A. I was not in the department before the mail bill was introduced. I suppose that was what they based their reports upon.

Q. Have you become familiar with what the practice was before the mail bill was introduced?

Mr. MERRICK. Just wait a moment.

The COURT. Well, that would only be hearsay.

Q. [Resuming.] Then, aside from the registers that are furnished by the postmasters at the terminal offices, and the mail bills now used, and such special reports as may be made by inspectors or others who are sent out specially to examine the routes, has the department any means of ascertaining how the service is being performed?—A. Not so far as I know.

Q. You are engaged now in that division, and have been for more than a year past, I believe?—A. Not quite a year.

Q. If two carriers should fail to connect by reason of seven feet of snow, or 27 feet, or for any cause, and one should go back on his route without having received the mail from the carrier whom he was to meet, how would you find it out; would you know anything about it?—A. It is possible we might not find it out at all unless the carrier made some report to the post-office, and in that manner it reached us.

Q. You would not know a thing about it?—A. Possibly not.

Q. And that thing might go on for a year and you would not know a thing about it unless some carrier made a report?—A. Unless it is an expedited route where we have a mail bill.

Q. Exactly; unless the mail bill shows it. Now, have you the reports the postmasters at the terminal points on this route 44155.

The WITNESS. For what period?

Mr. WILSON. For the period from July 1, 1878, until July 1, 1881?—

Certain of those records are now on file in the inspection division.

Q. What are those that are on file?—**A.** They should all appear on, but certain of them have been delivered to Mr. Woodward when led for.

Q. When were they delivered to Mr. Woodward?—**A.** I delivered certain records to him one day this week.

Q. Has he returned them to you?—**A.** I think they are now in court.

Q. Will you bring me now the reports of the postmasters at the terminal points of the route?

Mr. BLISS. He brought them with him.

A. I brought them with me.

Mr. BLISS. I thought you would ask for them, and I told him to bring them with him.

Mr. WILSON. Let me look at them, please.

[Papers submitted to Mr. Wilson.]

Q. Are these all the reports from the 1st of July, 1878, until the 1st July, 1882? If not, where are the rest?—**A.** On file. I only delivered such as were called for.

Q. They picked out such as they wanted?—**A.** For a certain period.

Q. These begin at what time and end at what time?

Mr. BLISS. They are dated. The papers will tell you.

Q. Do you recollect?—**A.** I think the latter half of 1878, and a part of 1879, or the whole of 1879.

Q. Are these continuous for the period that they called for them?—**A.** There are certain records that will not appear there, for they are filed in the cases which were made for those quarters. Records of arrivals and departures that show failures are laid one side to be put in the files. The others, which are supposed to show clear service, are put in the files.

Q. And these show the clear service?—**A.** Those that show clear service are filed away. I have not examined those.

Q. We want all of these records from July 1, 1878, until July 1, 1881. Please bear that in mind and bring them all to us.

Mr. INGERSOLL. You had better get a subpoena for him.

Mr. WILSON. No; he is on the witness stand, and I suppose the court will not require us to get a subpoena. I want these by and by to get through with this examination.

The COURT. I cannot require him to produce them within that time, certainly.

Mr. WILSON. Well, he can go off the stand presently, and then can bring them.

The COURT. He says that these which show failures are not in the regular files. They have been taken out and put amongst papers out of these special cases.

Mr. BLISS. He does not mean these cases in suit, sir. They speak of "cases" when they make up a package for deduction.

By Mr. WILSON:

Q. But they are on the files of the department, are they not, Mr. Bliss; they are in the cases on file?—**A.** They should be; yes, sir. Except certain ones. I have brought a few with me to-day.

Q. Have you some different from these?—**A.** Those records that show failures are on file. They should be.

Q. They are all there in your office, even though they are in case are they not?—A. Except what I brought with me this morning. brought a few cases with me this morning.

Q. Do you mean these? [Indicating papers in the hand of Mr. Bliss]—A. Mr. Bliss has them.

Q. Except these I hold in my hand, and those Mr. Merrick holds his hands, they are in the files of the inspection office?—A. They are the files of the inspection division; yes, sir.

Q. You can bring them?—A. If I can find them, and I suppose can.

Q. I not only want those, but I want the cases showing the fines & deductions on account of failure to perform the service as reported in those reports; you understand that; everything from July 1, 1878, til July 1, 1881?—A. Yes, sir.

[Mr. Bliss handed to the witness a package of papers.]

By the COURT:

Q. Have you those papers in your hand?—A. I have a certain portion of the papers; all that I brought here.

Q. What period is covered by them?—A. The last quarter of 1878, from October, 1878, until December, 1879.

The COURT. [To Mr. Wilson.] He has those special cases. He has the papers filed in the special cases during this period.

Mr. WILSON. [To the witness.] Let me see them.

[Papers submitted to Mr. Wilson by the witness.]

The COURT. This particular failure, if here, would be within that period—the particular period to which this cross-examination is directed.

Mr. BLISS. I ask the witness if he found any deductions during the expedition. I requested him to bring in all the papers showing deductions during the expedition, and these papers are confined to that, sir.

By Mr. WILSON:

Q. Mr. Bliss asked you whether you examined the records to ascertain whether any deductions were made on account of failure to perform service according to the expedited schedule, and I understood you to say that you had made no examination to find any deduction on that account?

Mr. BLISS. Oh, no; down to a certain period. I limited it to the 1st of November.

Mr. WILSON. To the 1st of November of what year?

The COURT. From the 15th of November, 1878, to the 1st of November, 1879.

By Mr. WILSON:

Q. [Resuming.] You say you find no deductions during that period on account of failure to perform service in the expedited time; do I understand you correctly?—A. I found no deduction made for failure of expedition, as far as I discovered.

Q. Did you examine the reports that were made by the postmasters, between November 15th, 1878, and November 1st, 1879?—A. No, sir.

Q. You did not?—A. I did not.

Q. Do you know whether the postmasters made any report at all to the inspection division of the failure to perform service according to the expedited time?—A. I do not know.

Q. You do not know whether they did or not; will you please examine the records now, and bring out any report that you can find show-

ing that information was ever given to the department that the service was not performed according to the expedited time ?—A. It should appear in those cases.

Q. In which cases ?—A. In the inside of those cases that I had in my hand.

Q. [Submitting papers to witness.] You take them, and understanding these papers, take out any paper there that gave to the department any information whatever that this service was not being performed according to the expedited time.

The COURT. Let the witness take his seat and examine these papers, and then you call another witness. You can recall him.

Mr. WILSON. Yery well.

EDWIN HALL recalled.

By Mr. BLISS :

Question. [Submitting a paper to the witness.] I hand you a paper not yet in evidence, and ask you to look at the first signature there and tell us what it is.

The WITNESS. The first signature on the left ?

Mr. BLISS. Yes, sir.

Answer. That is my name, sir.

Q. E. Hall, P. M. ?—A. Yes, sir.

Q. Is that your writing ?—A. No, sir.

Q. Did you write it ?—A. No, sir.

Q. Did you authorize anybody to put your name there ?—A. Not that I am aware of.

Mr. BLISS. This is a petition not yet in evidence, and I call Mr. Hall simply as he is going away. It is a petition upon the Canyon City and Fort McDermott route to which his name appears, and he says it is not his signature.

Q. [Resuming.] Are you acquainted with the people living in Canyon City and its vicinity ?—A. I am, sir.

Q. Is there any person there named D. M. Clifford ?—A. There is a person there by the name of Clifford, but I believe his name is M. D. Clifford.

Q. Is there any person there by the name of Max Metscham ?—A. Yes, sir.

Q. Is there any person there by the name of W. C. Allred ?—A. There is, sir.

Q. Is there any person there by the name of James Robinson ?—A. There is, sir.

Q. Is there any person there by the name of James F. Cleaver ?—A. There is, sir.

Q. Do you know the signatures of any of those gentlemen whose names I have given you ; I mean would you recognize the signatures of those five gentlemen if you saw them ?—A. I did not recognize the signatures on there.

Q. Do you know the signatures of any of those gentlemen—the genuine signatures ?—A. I know the signatures of some of them.

Q. Whose signatures of those five that I named, do you know ?—A. I should recognize the signature of James Robinson, and the signature of Max Metschen ; I am not positive in regard to the rest.

Q. Do you recognize those names as their signatures ?—A. No, sir ; I do not recognize the signatures of any of those six as being the parties at all ; I do not recognize them as such.

CROSS-EXAMINATION.

By Mr. HINE:

Q. You are postmaster at Canyon City?—A. I am.

Q. And have been postmaster there for some time?—A. I have been postmaster there since 1877.

Q. Have you read this petition?—A. I have not read the petition but simply saw the names.

Q. You have seen the petition before, have you?—A. Not that I am aware of.

Mr. HINE. I thought you said you had seen it before.

Mr. MERRICK. He said he had seen the names.

Q. Where do those parties reside whose names you see on the petition, but whose writing you do not recognize?—A. One of them resides at The Dalles; one of them resides at Prairie City, and two of them reside at Canyon City; I reside myself at Canyon City, and Allred resides at Prairie Diggings.

Q. Do you attend personally to the business of your office?—A. I always do when I am home, sir.

Q. How much of the time were you home during 1878 and 1879?—A. All the time, except I was away about two weeks after the severeness that I had.

Q. Did you remain at Canyon City continuously during 1878 and 1879 except then?—A. I believe so, to the best of my recollection.

Q. Who else attended to anything about your office, except yourself?—A. During the month of October I was lying very sick, and my office was attended to by my brother.

Q. October of what year?—A. October, 1878, I believe.

Q. During the entire month?—A. I could not say; perhaps a part of November and October. There was a month that I was in bed.

Q. You were confined to your bed during that time?—A. I was confined to my bed for a month, adjoining the office.

Q. [Submitting a paper.] Is that your report?—A. I believe it is.

Q. That is your signature is it?—A. I think so; yes, sir.

Mr. HINE. I would like to have the paper marked for identification. [The petition last shown the witness by Mr. Bliss was marked by the clerk W. E. W., I, and the paper last referred to shown the witness by Mr. Hine was marked W. E. W., I 2.]

Q. [Submitting another paper.] I show you another paper and ask you if that is your report and your signature?—A. It is, I believe.

[The paper last shown to the witness was marked by the clerk W. E. W., I 3.]

Q. [Submitting another paper.] I show you another report and ask you if that is your report and your signature?

[The witness examined the paper for a considerable length of time and did not answer.]

The COURT. Oh, speak out.

A. I really cannot say. I believe it is.

Q. Is it difficult for you to identify your own signature?—A. I believe that is my signature.

Q. Is it difficult for you to identify your own signature?—A. I was reading the form. Sometimes I do not always write my name alike.

Q. It is sometimes difficult for you to identify your own signature, is it?—A. That signature I believe is mine.

[The paper last shown to the witness was marked by the clerk W. E. W., I 4.]

- Q. [Submitting another paper.] I show you another paper, and ask if that is your report and your signature?—A. Yes, sir; I believe so.
- The paper last shown to the witness was marked by the clerk W. E., I 5.]
- Q. [Submitting another paper.] I show you that report and that signature, and ask you if it is yours?—A. I believe it is. The "Canyon City" is not my writing.
- Q. That is under your signature, is it?—A. Yes, sir. That is not my writing.
- Q. The body of it is yours and the signature is yours, is it?—A. A portion of the body of it.
- Q. What portion of the body of it is yours?—A. That portion. [Indicating.]
- Q. Is all the writing in the body of the report your handwriting?—A. All of it is not.
- Q. What portion of it is in your handwriting?—A. From the words "date of failure" to my signature.
- The paper last shown to the witness was marked by the clerk W. E., I 6.]
- Q. The indication of failure there is in somebody else's handwriting, is it?—A. On the top of this from the words "date of failure" to my signature is in my handwriting.
- Q. Then it is all in your handwriting except simply the date of it?—A. "Canyon City, Camp McDermot, March 31st, 1879, April 1st, 1879," "Canyon City" again, are not in my handwriting.
- Q. The comments are all in your handwriting?—A. The comments at the head of that certificate.
- Q. [Submitting another paper.] I show you this paper, and ask you if that is your handwriting and signature?—A. Yes, sir.
- The paper last shown to the witness was marked by the clerk W. E., I 7.]
- Q. [Submitting another paper.] I show you another paper, and ask if that is your report and in your handwriting?—A. Some of it is not.
- Q. Is the signature yours?—A. The signature, I believe, is mine.
- Q. Are you certain that it is your signature?—A. I believe it is mine.
- The paper last shown to the witness was marked by the clerk W. E., I 8.]
- Q. [Submitting another paper.] I will show you that letter, and ask if that is in your handwriting?—A. I do not recognize that as my handwriting.
- Q. Do you say that that letter and that signature is not in your handwriting?—A. I do not believe that the signature is my writing.
- Q. Do you believe the body of the letter is in your handwriting?—A. I will look at it again and examine it closely. [After a second examination.] I do not think it is.
- Q. Can you say that it is not?—A. The witness did not reply.]
- Q. What makes you hesitate so long?—A. There is one letter that looks something like my writing, "G." Some of it is like mine and part of it is not. The "R" is like mine and the "and."
- Q. How is it with the signature?—A. I am in doubt about the signature. I do not believe that the "P. M." is mine.

s the "E. Hall" your writing?—A. [After a pause.] I cannot say that as my signature.

Can you recognize it as not your signature?—A. The "Canyon" is not mine.

By the COURT:

Upon the whole, what is your best belief about it?—A. We are all in doubt about it, your honor; I am in grave doubt about it. Some of the writing is like mine and some is not.

By the FOREMAN [Mr. Dickson]:

Q. Did you ever write such a letter?—A. I have no recollection of ever writing such a letter.

Q. You have read the contents of the letter?—A. I have read the contents of the letter. I do not know what it has reference to.

[The paper last shown to the witness was marked by the clerk W. E. W., 19.]

Q. [Showing the witness petition marked 8 D, and indicating signature.] Is that your signature?—A. I believe it is, sir.

Q. [Submitting to witness petition marked 22 D, and indicating signature.] Is that your signature?—A. [After a pause.] It is very much like mine; it is a peculiar looking signature.

Q. Is it yours or not?—A. I really—[hesitating]—it may be mine; I think probably it is; I have no recollection of ever signing my name in that colored ink.

The COURT. The ink changes color sometimes.

Q. Now, as to the last petition I showed you, I wish you would answer positively whether that is your signature or not?—A. I would like to see the petition again, if you please. [Petition marked 22 D again shown witness.] Will you allow me to read the petition?

Mr. HINE. No. I would like to have you identify your signature.

The WITNESS. I believe that is my signature.

Mr. HINE. That there may be no mistake about it, I will state that it is 22 D.

The WITNESS. I am only in doubt about the color of the ink.

Q. [Submitting petition.] Here is a petition marked W. E. W., 1. Is that your signature?—A. No, sir.

Q. That is the one you first testified about?—A. That is not mine.

Q. That is the one you first testified about?—A. That is the one, I believe. Those are the names I first testified to; the six names there.

Q. How many times did you ever see any one of those six persons write whom you have just spoken about?—A. I do not know how many times I have seen them write. I have seen their writing.

Q. I do not understand your answer to the question. How many times have you seen those persons write?—A. I cannot say how many times.

Q. How long have you known them?—A. I have known all of the parties quite a number of years.

Q. Where did you ever see them write?—A. In my own office.

Q. How many times?—A. Quite a number of times.

Q. What is the business of the one that you spoke about having seen write in your office?—A. He is a tinner.

Q. At what place?—A. Canyon City.

Q. What was the occasion of his writing his name in your office?—A. He was making out applications for money orders.

Q. Will you point out to the jury the difference between that

ture [indicating] and this [indicating another] ?—A. I think the jury can see the difference.

Q. Will you please point it out ?—A. They cannot see it from here.

Mr. WILSON. Give them to the jury and let them look at them.

Q. Can you see any difference between the two signatures ?—A. I can see a great deal of difference.

By Mr. MERRICK :

Q. You know you did not write one of them, do you not ?—A. I am positive I did not write one of them.

Mr. HINE. [Exhibiting signatures to jury.] He says he wrote these two [indicating] and that one [indicating] and this [indicating].

The WITNESS. I do not know what you are showing. I don't know whether I wrote those that you are showing or not.

[The papers referred to were handed to the jury.]

The COURT. None of these papers are in evidence yet. We have not come to the time for them.

Mr. HINE. Very likely we had better reserve them till our case comes up.

The COURT. Oh, yes.

Mr. WILSON. No ; put them in now.

The COURT. The other side have not got their evidence-in-chief in yet.

Mr. MERRICK. No, sir ; but we will submit.

The COURT. These papers are not to go in evidence now. It will only create confusion.

Mr. HINE. It is confusing to the witness.

Mr. MERRICK. Not at all. It is not at all confusing to the witness. The witness has testified positively. The remark has no justification.

[The papers were withdrawn from the jury.]

By Mr. BLISS :

Q. I understand you to say, after seeing these other signatures, that this signature, on the petition marked W. E. W., I, is not yours ?—A. That is not mine.

GEORGE F. STONE recalled.

By Mr. WILSON :

Question. Have you made an examination of the papers ?—Answer. I have.

Q. What do you find with reference to the matter that I inquired about ?—A. I find no reports from those cases for the times specified which relate especially to the expedition.

Q. There is nothing, then, in any of the reports which came to the Post-Office Department showing a failure to perform the service according to the expedited schedule ?—A. There are two or three failures to arrive or depart.

Q. But I am talking about the expedited schedule.—A. There is no special reference made to expedition.

Q. There is no information, then, in the department on that subject ?—A. Not so far as I know, sir.

By Mr. MERRICK :

Q. There are some reports of failures to arrive and depart on time, are there ?—A. Two or three.

By Mr. WILSON :

Q. And as to those I will ask you to state whether the contractor was subjected to fines and deductions in the ordinary way ?—A. In the ordinary way.

Q. In other words every delinquency that was reported by the postmasters to the department was charged up to the contractor and deducted out of his pay ?—A. So far as shown in these cases, and so far as I can see from the files ; yes, sir.

Q. Can you, from anything you can see in those papers in the files, discover that there has been any failure in the department to make fines and deductions from the contractor wherever there was a delinquency on the part of the contractor reported ?—A. No, sir.

Q. None at all ?—A. Not so far as I have discovered.

Q. Then, so far as the action of the department is concerned, it is all regular.

The COURT. You have got the facts. We do not want his opinion about it.

Mr. WILSON. I think so. I do not know that I ought to pursue it further. I think your honor is right in stopping it here. I think the witness has made it sufficiently explicit.

By the FOREMAN [Mr. Dickson]:

Q. If there were any reports from postmasters relating to failures, would they appear among the papers ?—A. They should appear.

Q. And you found none ?—A. I found none.

Mr. WILSON. I would like to have those papers remain in court, your honor, so that we can have time to examine them. We have had no opportunity to see them this morning.

Mr. BLISS. [To counsel for defense.] You have a lot of our records of arrivals and departures.

The WITNESS. I have them. [Handing papers to Mr. Bliss.]

Mr. BLISS. I desire before the witness leaves the stand to put in these papers.

By Mr. BLISS:

Q. What are the papers you just handed to me ?—A. They are called monthly records of arrivals and departures.

Q. They come from the files of the inspection division, do they ?—A. Yes, sir.

Mr. BLISS. I offer in evidence the register of arrivals and departures for the month of April, 1879, of the post-office of Baker City, County of Baker, in the State of Oregon.

Mr. WILSON. If your honor please, this witness is brought here to produce papers or to make certain statements, and Colonel Bliss had these papers in his hand when he examined the witness originally. We have gone through the cross-examination, and now he steps in on re-examination to introduce these papers.

The COURT. These are the papers that you have been examining about, I understand, and that have just been proved by the witness.

Mr. WILSON. I shall insist upon having all these papers go in evidence at the proper time ; but this is rather an irregular way of doing business.

Mr. MERRICK. Not at all.

The COURT. Not at all. We are back upon the Baker City route.

Mr. BLISS. The fact is the gentlemen took these papers from me and were looking them over and I couldn't offer them, and so I went on with the examination.

Mr. WILSON. I never took them from him until I got to the cross-examination, and then he held them up and let us know for the first time that he had them.

Mr. MERRICK. We are proceeding in regular order.

The COURT. We will pass that over; let it go.

Mr. BLISS. [Reading:]

trips per week, 3.

Register of arrivals and departures for the month of April, 1879.

Post-office at Baker City, county of Baker, State of Oregon.

Route number 44155, from The Dalles to Baker City. Contract time of arrival, 72 hours. Contract time of departure, 4 a. m.

Name of contractor, John M. Peck. Name of carrier, A. Farnsworth.

Mode of conveyance—

Days of week.	Of month.	Hour of arrival.	Hour of departure.
Monday	1	8.30 p. m.	4 a. m.
Tuesday	2	.....	.....
Wednesday	3	.....	4 a. m.
Thursday	4	9 p. m.	.....
Friday	5	.....	4 a. m.
Saturday	6	8.30 p. m.	.....
.....	7	.....	.....
Monday	8	10 p. m.	4 a. m.
.....	9	.....	.....
Tuesday	10	.....	4 a. m.

I do not know that I desire to read further. It goes on in the same way.

Mr. WILSON. I desire to have them all read.

Mr. MERRICK. All what?

Mr. WILSON. All of those papers.

Mr. MERRICK. We do not propose to offer them.

Mr. WILSON. I do.

Mr. MERRICK. You can offer them when your time comes. You cannot dictate our testimony.

The COURT. You cannot oblige them to put it in.

Mr. BLISS. I suppose they are entitled to have me read this whole paper if they desire, and therefore I will read it.

Mr. WILSON. I want to know if you are putting these in evidence?

Mr. BLISS. I am putting in the report for April, being the period covered by the statement of Mr. Fisk. He said that there was no through mail, and the report shows the arrival of the mail. That is why I am putting it in.

The COURT. The postmaster reports that.

Mr. BLISS. Mr. Fisk, the carrier, said he made no connection, and the postmaster makes this report. I am not offering it with reference to the mail, but with reference to the contractor.

Mr. HENKLE. How does it affect us?

The COURT. How can that affect the contractor? If the postmaster fails to perform his duty how does that affect the contractor?

Mr. BLISS. It only has a bearing in this way: The claim is made that these reports of the postmasters are conclusive upon us, and show that there were arrivals and departures. I am simply meeting that point by showing that at this time, when Mr. Fisk said there was no connection

Tuesday	15	9.30 p
Thursday	16	.....
Friday	17	.....
Saturday	18	6 p
Sunday	19	.....
.....	20	6 p
.....	21	.....
Tuesday	22	9.30 p
Thursday	23	.....
.....	24	.....

The COURT. [Interposing.] Oh, certainly, we do not want a
Mr. WILSON. No; if he will put it in evidence that is all I
Mr. BLISS. [Reading:]

Report specially dates and causes of failure on next page. Certified to be
George H. Tracy, P. M.

There are some blank instructions on the back, which I will
unless required.

The COURT. Are there any failures reported on the other 10

Mr. BLISS. No, sir; it is reported straight through.

[The paper last read was marked by the clerk 57 D.]

The COURT. Does this close your evidence upon this route?

Mr. BLISS. Yes, sir; this is all I am aware of at present
route.

The COURT. What is your next route?

Mr. CARPENTER. The next is recess.

The COURT. Let us first determine what we will take up.

Mr. BLISS. I think I shall take up next route 38145, if my
here. It was originally from Garland to Parrott City, and sub
known as the route from Ojo Caliente to Parrott City.

At this point (12 o'clock and 30 minutes p. m.) the court
usual recess.

AFTER RECESS.

[The maps of the route in question were distributed to the jury and counsel.]

GEORGE M. SWEENEY recalled.

By Mr. BLISS:

Question. [Submitting a paper.] I show you a jacket headed June 26, 1878. See if you recognize in whose handwriting it is?—Answer. The caption and body of the order are in the handwriting of W. H. Turner; the signature by General Brady.

[The witness then, by request of Mr. Wilson, marked the paper identified, 1, and marked the papers subsequently identified by the numbers given in each case, in brackets, after his answer.]

Q. [Submitting a paper.] I show you a paper headed "38145. Colo.;" the paper consists of four sheets pinned together?—A. I think this is Byron Coon's writing; there is so little of it I am not certain.

Q. Please look at the stamp on the inside?—A. It is the stamp of the contract office.

Q. Of the Post-Office Department?—A. Yes, sir. [2.]

Q. [Submitting a paper.] I show you a jacket headed October 31, 1878.—A. The caption of this paper and the body of it are in the handwriting of William H. Turner; the signature and the word "special" are in the handwriting of John L. French. [3.]

Q. [Submitting another paper.] I show you a jacket headed January 23, 1879?—A. The caption of the order and the body are written by William H. Turner; the signature by John L. French. [4.]

Q. [Submitting another paper.] I show you a letter of three sheets with a sketch map inclosed. Whose is the indorsement?—A. This is indorsed by William H. Turner. [5.]

Q. [Submitting another paper.] I show you a jacket?—A. The red ink by William H. Turner. The "Do this—Brady," by General Brady. [6.]

Q. [Submitting another paper.] I show you a letter inclosed in that jacket, indorsed at the top, March 27, 1879?—A. Indorsed by William H. Turner.

Q. What is the stamp?—A. The stamp of the Postmaster-General. [7.]

Q. [Submitting another paper.] Also a letter inclosed in the last jacket marked "Copy—1693"?—A. I do not know this indorsement. It was made by the War Department.

Q. Look at the stamp inside?—A. It is the stamp of the inspection division of the Post-Office Department. [8.]

Q. [Submitting another paper.] I show you a letter indorsed on the back April 14, 1879?—A. Indorsed by Byron C. Coon.

Q. The stamp on the inside?—A. The stamp of the contract office, Post-Office Department. [9.]

Q. [Submitting another paper.] Letter indorsed 1879, May 3?—A. Indorsed by Byron C. Coon.

Q. Stamped on the inside?—A. By the contract office, Post-Office Department. [10.]

Q. [Submitting another paper.] I show you a jacket dated April 24, 1879?—A. The caption and the body of the order were written by William H. Turner; and the signature by General Brady. [11.]

Q. [Submitting another paper.] I show you a jacket dated April 29, 1879?—A. The caption of the order and the body are in the handwriting of William H. Turner; and the signature by General Brady. [12.]

Q. [Submitting another paper.] I show you a letter indorsed 1~~8~~
April 26?—A. By Byron C. Coon. [13.]

Q. [Submitting another paper.] I show you a letter indorsed 1~~8~~
April 16?—A. By Byron C. Coon. [14.]

Q. [Submitting another paper.] I show you a calculation in figure
—A. In the handwriting of William H. Turner. [15.]

Q. [Submitting another paper.] I show you a paper headed 1~~8~~
April 16?—A. Indorsed by Byron C. Coon. [16.]

Q. [Submitting two papers.] I show you two papers pinned together,
one headed April 26, 1879, and the other April 24, 1879?—A. The paper
indorsed April 26 is indorsed in the handwriting of William H. Turner.
The indorsement April 24 is in the handwriting of Byron C. Coon. [17
and 18.]

Q. [Submitting another paper.] I show you a petition indorsed 1879,
April 26?—A. Indorsed by Byron C. Coon. [19.]

Q. [Submitting another paper.] I show you a letter indorsed April 26,
1879?—A. By Byron C. Coon. [20.]

Q. [Submitting another paper.] I show you a letter indorsed April
26, 1879?—A. By Byron C. Coon. [21.]

Q. [Submitting another paper.] I show you a letter indorsed April
25, 1879?—A. By Byron C. Coon.

Q. Stamped on the inside?—A. Office of the Postmaster-General.
[22.]

Q. [Submitting another paper.] I show you a letter indorsed April
23, 1879?—A. By Byron C. Coon.

Q. Look at the stamp on the inside?—A. Office of the Postmaster-
General.

Q. That is the Postmaster-General's stamp, is it?—A. Yes, sir. [23.]

Q. [Submitting another paper.] I show you a letter indorsed April
22, 1879?—A. By Byron C. Coon.

Q. Please look at the stamp on the inside.—A. The stamp is that of
the the Office of the Postmaster-General. [24.]

Q. [Submitting another paper.] I show you a letter indorsed in red,
1879, April 16?—A. The writing in red ink is by Byron C. Coon. [25.]

Q. [Submitting another paper.] I show you a paper indorsed in red
ink, 1879, April 16?—A. By Byron C. Coon. [26.]

Q. [Submitting another paper.] I show you a paper indorsed in red
ink, April 16, 1879?—A. The red ink is by Byron C. Coon. [27.]

Q. [Submitting another paper.] I show you a paper indorsed in red
ink, 1879, April 16?—A. By Byron C. Coon. [28.]

Q. [Submitting another paper.] I show you a paper indorsed in red
ink, 1879, April 16?—A. By Byron C. Coon. [29.]

Q. [Submitting another paper.] I show you a paper indorsed at the
top 38145 Colo.?—A. I think this Byron C. Coon.

Q. Look at the stamp on the inside.—A. It is that of the office of
the Postmaster-General. [30.]

Q. [Submitting another paper.] I show you a paper indorsed 1879,
February 24?—A. By Byron C. Coon.

Q. Please look at the stamp on the inside.—A. That of the office of
the Postmaster-General. [31.]

Q. [Submitting another paper.] I show you a paper indorsed March
11, 1879?—A. By Byron C. Coon.

Q. Please look at the stamp on the inside.—A. Office of the Post-
master-General. [32.]

Q. [Submitting another paper.] I show you a paper indorsed Octo-
ber 31, 1878?—A. By William H. Turner. [33.]

Mr. BLISS. All of those papers are in jacket number 12.

Q. [Submitting another paper.] I show you a paper indorsed May 1879?—A. By Byron C. Coon.

Q. Please look at the stamp on the inside.—A. That of the contract of the Post-Office Department. [34.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, March 13?—A. By Byron C. Coon?

Q. Look at the stamp on the inside.—A. It is that of the office of the Postmaster-General. [35.]

Q. [Submitting another paper.] I show you an unindorsed letter dated July 19, 1879. What is the stamp?—A. That of the contract of the Post-Office Department. [36.]

Q. [Submitting another paper.] I show you a jacket dated April 23, 1881?—A. The caption and body of the order are in the handwriting of William H. Turner. The signature is that of John L. French. [37.]

Q. [Submitting another paper.] I show you a paper inclosed in that jacket indorsed 1881, April 23?—A. It is indorsed by Byron C. Coon.

Q. [Submitting another paper.] I show you a paper dated 1881, April 23, also inclosed in the same jacket?—A. Indorsed by Byron C. Coon.

Q. Please look at the stamp?—A. That of the Second Assistant Postmaster-General. [39.]

Q. [Submitting another paper.] I show you a jacket dated January 5, 1881?—A. The red ink in the body of the order is by William H. Turner; the signature is by General Brady. [40.]

Q. [Submitting another paper.] I show you a paper, inclosed in the jacket, dated January 5, 1881?—A. Indorsed by William H. Turner.

Q. [Submitting another paper.] I show you a jacket dated December 1878?—A. The caption and body of the order were written by William H. Turner; the signature by General Brady. [42.]

Q. [Submitting another paper.] I show you a paper dated December 1878, inclosed in the same jacket?—A. Indorsed by William H. Turner. [43.]

Q. [Submitting another paper.] I show you a jacket dated February 1881?—A. The writing in red ink and the body of the order are in the handwriting of William H. Turner; the signature by General Brady. [44.]

Q. [Submitting another paper.] I show you a paper indorsed November 24, 1880?—A. Indorsed by William H. Turner.

Q. The stamp?—A. It is very indistinct, but it is that of the office of the Second Assistant Postmaster-General. [45.]

Q. [Submitting another paper.] I show you a paper indorsed 1880, November 19?—A. By Byron C. Coon. [46.]

Q. [Submitting another paper.] I show you a paper indorsed 1881, March 1?—A. By Byron C. Coon. [47.]

Q. [Submitting another paper.] I show you a letter indorsed March 1881?—A. By Byron C. Coon. [48.]

Q. [Submitting another paper.] I show you a letter that is torn, and has two or three stamps but nothing else. What are the stamps?—A. The stamps of the office of the Second Assistant Postmaster-General.

Q. [Submitting another paper.] I show you a letter unindorsed, dated November 13, 1880. What is the stamp?—A. That of the office of the Second Assistant Postmaster-General. [50.]

Q. [Submitting another paper.] I show you a petition with no indorsement but a stamp on the outside?—A. The stamp of the office of the Second Assistant Postmaster-General. [51.]

Q. [Submitting four papers.] In the same jacket are these four petitions unindorsed, and, so far as I see, without stamps. See if there is anything by which you can recognize them?—A. There is no stamp or indorsement on these papers, but they evidently pertain to that route. They request an increase of service on it. [52, 53, 54, 55.]

Q. [Submitting another paper.] I show you a paper indorsed 1880, April 27?—A. By Byron C. Coon.

Q. The stamp on the inside?—A. That of the inspection division, Post-Office Department. [56.]

Q. [Submitting another paper.] I show you a jacket indorsed March 21, 1879?—A. The caption and body of the order are by Byron C. Coon, and the signature by General Brady. [57.]

Q. [Submitting another paper.] I show you a paper indorsed on the outside 1879, March 6?—A. This indorsement is by Byron C. Coon. [58.]

Q. [Submitting two papers.] Inclosed in that are two papers without indorsement, but having a stamp?—A. The stamp of the contract office, Post-Office Department. [59 and 60.]

Mr. BLISS. Numbers 58, 59, and 60 are in jacket 57.

Q. [Submitting another paper.] I show you a paper indorsed April 26, 1879?—A. Indorsed by Byron C. Coon.

Q. Stamped?—A. Inspection division, Post-Office Department. [61.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, March 29?—A. By Byron C. Coon.

Q. Stamp?—A. Only part of the stamp is here, but I suppose it is of the contract office, Post-Office Department. [62.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, May 15?—A. Indorsed by Byron C. Coon.

Q. How is it stamped?—A. By the stamp of the contract office, Post-Office Department. [63.]

Q. [Submitting another paper.] I show you an unindorsed paper, stamped on the inside; what is the stamp?—A. The stamp of the contract office, Post-Office Department. [64.]

Q. [Submitting another paper.] I show you an unindorsed paper, headed Washington, May 26, 1879, on the inside?—A. The blank is filled up by William H. Turner. [65.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, August 4?—A. The indorsement is by Byron C. Coon.

Q. The stamp on the inside?—A. Is that of the contract office, Post-Office Department. [66.]

Q. [Submitting another paper.] I show you a paper indorsed on the outside 1879, June 28?—A. The indorsement is in the handwriting of Byron C. Coon. [67.]

Q. [Submitting another paper.] Inside and pinned to it is this paper, indorsed 1879, May 31?—A. Indorsed by Byron C. Coon. [68.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, December 23?—A. Indorsed by Byron C. Coon.

Q. The stamp?—A. Is that of the inspection division Post-Office Department. [69.]

Q. [Submitting another paper.] I show you a paper indorsed November 3, 1879?—A. Indorsed by William H. Turner.

Q. Stamped?—A. The stamp is that of the office of the Second Assistant Postmaster-General. [70.]

- Q. [Submitting another paper.] I show you a paper indorsed 1880, April 27 ?—A. Indorsed by Byron C. Coon.
- Q. The stamp ?—A. That of the office of the Postmaster-General.
- Q. [Submitting another paper.] I show you a jacket dated 1880, April 28 ?—A. The caption and body of the order are by Byron C. Coon, the signature by John L. French. [72.]
- Q. [Submitting another paper.] I show you a paper inclosed in that jacket indorsed 1880, April 26 ?—A. Indorsed by Byron C. Coon. [73.]
- Q. [Submitting another paper.] I show you a jacket dated October 1878 ?—A. The blanks are filled up by William H. Turner, and the signature by General Brady. [74.]
- Q. [Submitting another paper.] I show you a paper inclosed, headed "contract ?"—A. That I do not know the writing of ? [75.]
- Q. [Submitting another paper.] I show you a jacket dated 1879, September 29 ?—A. The blanks are filled up by Byron C. Coon; the signature by General Brady. [76.]
- Q. [Submitting another paper.] Inclosed in that jacket is a paper dated 1879, September 29 ?—A. Indorsed by Byron C. Coon. [77.]
- Q. [Submitting another paper.] Also inclosed in the same jacket a paper headed "contract," and stamped on the outside ?—A. The stamp that of the contract office of the Post-Office Department. [78.]
- Q. [Submitting another paper.] I show you a jacket headed October 1879 ?—A. The caption and body of the order are in the handwriting William H. Turner; the signature by John L. French. [79.]
- Q. [Submitting another paper.] Inclosed in that jacket a paper dated October 25, 1879 ?—A. Indorsed by William H. Turner.
- Q. The stamp on the inside ?—A. Is that of the office of the Second Assistant Postmaster-General. [80.]
- Q. [Submitting another paper.] I show you a paper headed July 2, 1879 ?—A. Indorsed by William H. Turner. Stamped, Office of the Postmaster-General. [81.]
- Q. [Submitting another paper.] I show you a jacket headed June 30, 1879 ?—A. The caption and body of the order are in the handwriting of William H. Turner. The signature by John L. French. [82.]
- Q. [Submitting another paper.] Inclosed in that jacket a paper dated June 29, 1880 ?—A. Indorsed by William H. Turner. [83.]
- Q. [Submitting another paper.] I show you a jacket dated June 30, 1879 ?—A. The blanks are filled up by Wm. H. Turner. The signature by John L. French. [84.]
- Q. [Submitting another paper.] I show you a paper headed "contract." Do you recognize anything about it ?—A. Yes, sir, I do. This receipt attached to it is in my handwriting. [85.]
- Q. [Referring to the papers as a whole.] Do you recognize those papers as ever having been in your possession ?—A. Yes, sir.
- Q. What are they ?—A. They are part of the files of route 38145.
- Q. Of the Post-Office Department ?—A. Yes, sir.
- Q. Have you parted with the custody of them to anybody ?—A. Yes,
- Q. To whom ?—A. They were delivered either to Mr. Woodward in person or sent for by him.
- Q. Do you know what date ?—A. The receipt was dated the 7th day of September, 1881.

CROSS-EXAMINATION.

By Mr. WILSON :

- Q. These are part of the files you say ?—A. Yes, sir.

Q. Where are the rest of them?—A. If there are any papers that have come in since that date they are probably on file at the Post-Office Department.

Q. Do these papers that are stamped with the Postmaster-General's stamp belong to the Second Assistant's office, or to the Postmaster-General's office?—A. To the Second Assistant's office.

Q. How do they happen to have the Postmaster-General's stamp on them?—A. Probably the envelope inclosing them and the communications themselves may have been addressed to the Postmaster-General. Then they would simply have the stamp of his office, and be sent to the Second Assistant Postmaster-General.

Q. Would they be sent to him direct, or sent to the corresponding clerk?—A. They would, in most cases, go to the corresponding clerk, and the Second Assistant would probably not see them until his attention was called to them.

Q. And if his attention was not specially called to them he never would see them?—A. Never would see them unless his attention was called to them; that is, probably not.

Q. That is so with a great many of these cases, is it not?

The WITNESS. That his attention would not be called to them?

Mr. WILSON. Yes.

A. A great many papers his personal attention would not be called to.

P. H. WOODWARD recalled.

By Mr. BLISS:

Question. [Submitting a bundle of papers.] Look at those papers numbered in black pencil from 1 to 85, inclusive. Unless the other side desire it you need not open the jackets.—Answer. [After examining the papers.] These papers have been in my custody.

Q. From whom did you receive them?—A. I received them from the contract office.

Q. Do you know, of your own knowledge, when you received them?—A. No, sir.

Q. Do you know whether it was this year or last year?—A. It was in the summer or fall of 1881.

Q. You have preserved them since, have you?—A. I have; yes, sir.

Q. You have testified with reference to papers on other routes, and as to your mode of preserving them, and your care of them. Is your testimony the same as to these papers?—A. Precisely the same; yes, sir.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. You were not here on the 7th of September?—A. No, sir.

Q. Nor for ten days afterward?—A. I think I was here about the 17th or 18th.

Mr. WILSON. That is all.

Mr. BLISS. I offer these papers in evidence, but before reading them to the jury I will read the contract.

Mr. WILSON. You need not read it unless you want to.

Mr. BLISS. I will only read a portion of it. It is dated March 1 1878, and is between the United States and J. W. Dorsey, D. W. Wheeler, and S. M. Hoyt.

Mr. WILSON. They are the sureties.

Mr. BLISS. Yes. It recites that Dorsey has been accepted as the contractor on route 38145 from Garland by Conejos, Ojo Caliente, El Rito, Pierra Amarilla, Park View, Florida, and Animas City, to Parrott City and back once a week, for \$2,745. This contract is signed by Postmaster-General Key and Dorsey, in the presence of A. E. Boone and John R. Miner as witnesses. The schedule is:

Leave Garland Monday at 6 a. m.
 Arrive at Parrott City in 7 days.
 Leave Parrott City Monday at 7 a. m.
 Arrive at Garland in 7 days.

The oath is taken by Mr. Dorsey before A. E. Boone, notary public.
 [The contract was marked by the clerk 1 E.]

The FOREMAN [Mr. Dickson]. How many miles is the route?

Mr. BLISS. The contract does not give the number of miles. In point of fact, as originally let, it was two hundred and eighty-eight miles.

I will now read this jacket:

Date, June 26, 1878.

State, Colorado.

Number of route, 38145.

Termini of route, Garland and Parrott City.

Length of route, 288 miles.

No. of trips per week, one.

Contractor, John W. Dorsey.

Pay, \$2,745 per annum.

That portion of this route, from Garland to Ojo Caliente, will be superseded by service on route 38163, saving 116 miles.

So far in red. Now in black ink:

Curtail service so as to commence at Ojo Caliente, omitting Garland and Conejos, decreasing distance 116 miles, and deduct from contractor's pay \$1,105.66 per annum, being pro rata. Allow contractor one month's extra pay on service dispensed with.
 BRADY.

[The jacket last read was marked by the clerk 2 E.]

I now offer a jacket as follows:

Date, October 31, 1878. State, Colorado.

No. of route, 38145. Termini of route, Ojo Caliente and Parrott City.

Length of route, 172 miles. No. of trips per week, one.

Contractor, J. W. Dorsey. Pay, \$1,639.34 per annum.

No time named in order bearing date June 23d, 1878.

So far in red ink. Now in black ink:

Modify order bearing date June 26, 1878 [number 4756], so as to take effect July 1st, 1878.

FRENCH.

Special.

FRENCH.

[The jacket last read was marked by the clerk 3 E.]

I now offer the following jacket:

Date, January 23d, 1879. State, Colorado.

No. of route, 38145. Termini of route, Ojo Caliente and Parrott City. Length of route, 172 miles. No. of trips per week, one.

Contractor J. W. Dorsey. Pay \$1,639.34 per annum.

Animas City can be embraced on route number 38156 from Silverton to Parrott City, decreasing the distance 18 miles.

So far in red ink. Now in black ink.

Curtail service so as to end at Animas City, omitting Parrott City, decreasing the distance 18 miles, and deduct from contractor's pay \$171.56 per annum, being pro rata, and allow one month's extra pay on service dispensed with from February 1st, 1879.

FRENCH.

The paper last read was marked by the clerk 4 E.]

The COURT. The whole distance from Ojo Caliente to Parrott C
I make it, is one hundred and ninety-nine and one-half miles.

Mr. BLISS. It is one hundred and seventy-two miles, your honor -
is two hundred and eighty-eight originally, and one hundred and C
en were taken off.

The COURT. I am going by the figures on the map.

Mr. BLISS. I am speaking by the record as it is here.

The COURT. Take off thirty miles from Animas City to Parrott C
and that would make it one hundred and seventy-nine.

Mr. BLISS. This paper recites that the distance from Animas C
to Parrot City is eighteen miles.

The next paper I offer is the following:

UNITED STATES SENATE CHAMBER,
Washington, D. C., June 10, 1878.

Hon. T. J. BRADY,
Second Assistant Postmaster-General:

SIR: In consequence of the extension of the Denver and Rio Grande Railroad, it will become necessary to increase the mail service from the terminus of that railroad south of Fort Garland, Colorado, to Santa Fé, New Mexico, to 7 times a week with fast schedule. This will give the people of New Mexico and Arizona their mail ten or 12 hours quicker than they get it now.

I write this to call attention to the fact that the route from Fort Garland by Taos to Santa Fé is on the east side of the Rio Grande River, which, for upwards of 100 miles, cuts through an enormously deep and impassable cañon. The railroad runs on the west side of the river, and there is and can be no connection between the line of railroad and the Fort Garland and Santa Fé mail route. The route which connects with the railroad is the Garland, Conejos and Ojo Caliente route. This is the one to be increased, and to which I call your special attention, and ask that you examine your maps before action is taken.

The route from Garland via Taos cannot be moved to the west side of the Rio Grande, as it supplies a number of local offices, including Taos, and as there is another route already in operation connecting directly with the railroad which should be increased.

I send you a diagram received from parties in Santa Fé.

Very respectfully,

S. W. DORSEY.

Inclosed is a diagram, on the back of a telegraph blank. On the front of the telegraph blank in pencil are these words:

John W. Dorsey. July 1, 1878, 1882 subcontract to 13 January, 1879. Anthony Joseph. September 1, 1879. Jaramillo.

[The letter last read was marked by the clerk 5 E.]

I now offer the following jacket:

Date, blank. State Colorado.

No. of route, 38145. Termini of route, Ojo Caliente and Animas City.

Length of route, 174 miles.

No. of trips per week, one.

Contractor, J. W. Dorsey.

Pay \$1,658.40 per annum.

The honorable the Secretary of War transmits a copy of a communication from commanding officer of Fort Lewis, Colorado, setting forth the great necessity for frequent mail communication with Santa Fé, New Mexico. Three times a week is recommended. There are 7 intermediate offices on the route that would be benefited by an increase of service. Southern Colorado would also be greatly benefited by the increase of service asked for. Ojo Caliente is at present receiving daily communication on route No. 38144, from Fort Garland to Santa Fé. Hon. H. M. T. S. S., Hon. N. P. Hill, U. S. S., and Hon. J. B. Chaffee, of Colorado, join in recommending the improved service petitioned for. Hon. H. M. Atkinson, surveyor-general New Mexico, recommends daily service on this route. Judge Thomas Bow daily service.

Schedule to be expedited from 90 hours to 50 hours.

Contractor submits sworn statement in regard to number of men and animals required on present and proposed schedule:

Two trips.....	\$3,316 80 per annum.
Expedition	\$8,457 84 per annum.
Total increase.....	\$11,774 64 per annum.

This is all in red ink. Across the face of the jacket is written in black, "Do this—Brady."

[The jacket last read was marked by the clerk 6 E.]

Inclosed is a letter from the Secretary of War, transmitting a letter from the commanding officer of Fort Lewis, Colorado, inviting the attention of the Postmaster-General——

Mr. INGERSOLL. [Interposing.] Read it.

Mr. BLISS. [Reading:]

WAR DEPARTMENT,
Washington City, March 25, 1879.

SIR: I have the honor herewith to transmit a copy of a letter dated the 4th instant from the commanding officer Fort Lewis, Colorado, inviting your attention to the inefficiency of the mail service between that post and the East, and recommending that said service be increased to at least a semi-weekly or tri-weekly mail.

Very respectfully, your obedient servant,

GEORGE W. MCCRARY,
Secretary of War.

The honorable POSTMASTER-GENERAL.

[The paper last read was marked by the clerk 7 E.]

The next paper is as follows, headed "copy":

(Stamped:) Inspection P. O. Dept. Mar. 27, 1879.

H'DQ'RS FORT LEWIS, COLO.,
March 4, 1879.

To the POSTMASTER-GENERAL,
Washington, D. C.:

(Through H'dq'r's Dist. of New Mexico.)

SIR: I have the honor to invite attention to the inefficiency of the mail service between this post and the East, and to recommend that said service be increased to at least a semi or tri-weekly mail. At present all the mail for the post comes over the route from Ojo Caliente, N. M., to Animas City, Colo. It is true a weekly mail has been established between Pagosa Springs and Del Norte, Colo. (carried on foot over the summit), but I have yet to learn that a single letter has been brought into this garrison by it. I cannot tell where the fault lies, but there is evidently a screw loose somewhere. The mail from Ojo Caliente is carried on horseback, and as a rule, only letters come through. Official communications have been fifteen days en route between this post and Fort Leavenworth, Kansas, and a longer time has been occupied in the transmission of letters between here and Santa Fé, N. M., a distance of only 160 miles.

Last month a detachment of recruits were sent to my company from Santa Fé in a six-mule team. Their descriptive lists were sent by mail. The recruits arrived here at six days in advance of their descriptive lists. A person might almost as well be in Alaska as at Fort Lewis so far as any benefits to be derived from the public press are concerned. An officer informed me yesterday that he had lost a hundred papers since the first of January, and for myself, I can say that I have received but three numbers of a weekly periodical which has been regularly sent to me since the 20th of December last. I am informed by two gentlemen whom I know to be reliable that in January last, when passing through Ojo Caliente they saw a large amount of mail which had accumulated in that office, and one of them was allowed to look it over and take out letters addressed to himself and friend.

They report that the business of the office was conducted in a loose manner, registered letters receiving no more attention than newspapers, and all the mail stored in such manner as to be easily pilfered.

I should have made an earlier report of this matter had I not been informed that the Postmaster at Ojo Caliente had been changed, as well as the contractor over the route, and hoped for some improvement.

I am told that the mail sometimes comes through in ordinary grain sacks, and I have deemed it necessary to send a carrier, with a letter, to Santa Fé, because of the uncertainty attendant on its delivery by the mail.

all in buck-boards, or some light vehicle,
y. We might then hope to get what belongs to us, —
at we might get it on time, something as yet almost unknown.

Very respectfully, your obedient servant,
(Signed)

F. S. DODGE.
Captain of Cav'y, Com'd'g Post.

[1st indorsement.]

HEADQUARTERS DISTRICT OF NEW MEXICO.
Santa Fé, N. M., March 11, 1879.

Respectfully forwarded through the assistant adjutant general Department of the Missouri.

In the absence of Colonel Hatch,
(Signed)

JOHN S. LOUD,
1st Lieut. and Adjutant 9th Cavalry, Acting Assistant Adjutant-General.

[2d indorsement.]

HEADQUARTERS DEPARTMENT OF THE MISSOURI.
Fort Leavenworth, Kansas, March 17, 1879.

Respectfully forwarded to the Adjutant-General of the Army [through office of assistant adjutant-general, headquarters Military Division of the Mo].

(Signed)

JOHN POPE,
Br't Major-Gen'l U. S. A., Com'd'g.

[3d indorsement.]

HDQRS. MIL. DIV. MO.,
Chicago, March 19, 1879.

Respectfully forwarded to the Adjutant-General of the Army. In the absence of the Lieut. Gen'l, com'd'g.

(Signed)

WM. D. WHIPPLE.
Asst. Adj't Gen'l.

(Indorsed :) Chicago, March 19, 1879. Commanding general Mil. Div. Missouri, forwards communication of Capt. F. S. Dodge, 9th Cav'y, com'd'g Ft. Lewis, Col., relative to mail service between Ft. Lewis, Col., and the East.

Adjutant General's office, Washington, March 24, 1879. Official copy. (Signed) E. D. Townsend, Adjutant-General. To the honorable the Postmaster-General.

[The paper last read was marked by the clerk 8 E.]

I now offer the following letter:

[Anthony Joseph, proprietor of Medicinal Hot Springs, and dealer in general merchandise. Taos & Ojo Caliente, N. M.]

(Stamped :) Contract office, P. O. D., April 14, 1879.

TAOS, N. MEXICO, April 2, 1879—

Hon. THOS. J. BRADY,

Second Asst. P. M. General, Washington:

SIR: The P. M. at Ojo Caliente, has placed before me your communication of the 21st of March, 1879, changing the schedule of departures and arrivals of the mail on route No. 38145 (Ojo Caliente to Animas City). As the subcontractor on said route, permit me to inform you that it is impossible to carry the mail on said route once a week inside of 100 hours. The distance is, from Ojo Caliente to Animas City, 181 miles, the road is mountainous and very rough; the mails are very bulky and heavy, and the rivers are very bad to ford four months in the year. The best that I can do, under the circumstances, is to carry the mail through on a schedule of six days; leave Ojo Caliente, Monday at 6 a. m.; arrive at Animas City, Saturday at 6 p. m. Leave Animas City, Monday at 6 a. m., and arrive at Ojo Caliente, Saturday at 6 p. m. This arrangement will satisfy all parties, make the proper connections, and allow me just time enough to make the service regular and efficient. Trusting that you will take the above facts in consideration, and do me justice in the premises, I remain, your obedient servant,

ANTHONY JOSEPH.
Subcontractor.

[The paper last read was marked by the clerk 9 E.]

I now offer this letter :

SANTA FÉ, NEW MEXICO, April 24, 1879.

Hon. T. J. BRADY,
Second Assistant Postmaster-General :

SIR: I respectfully beg to call your attention to the fact that Southwestern Colorado and Northwestern New Mexico have a large population which is being rapidly augmented by immigration into the mining districts of that country, and that in consequence of its rapid settlement, important towns are springing up along the Animas, San Juan, and other rivers which drain that prosperous section. Among these points are the important towns of Pierra Amarilla, Animas City, and the new and important military post known as Fort Lewis, at Pagosa Springs. Our only means of communicating with these points is by the weekly and tedious service supplied from your department, between Ojo Caliente, in this Territory, and Parrott City, Colorado, unless we avail ourselves of the circuitous postal service supplied from Alamosa to Pagosa, which is impracticably roundabout. It would greatly promote needed rapid communication between this city and Southwestern Colorado if the Ojo Caliente and Parrott City mail route could be increased to a daily, with *fast time*. The establishment of such a valuable service on said route would not only meet the urgent demands of the civil and military departments of the government in Colorado and New Mexico, but would also facilitate local commercial development along said route.

Should you find it possible to increase the service, as now suggested on the route named, you would, by ordering such increase as early as possible, greatly accommodate the governmental and State and Territorial business of this section and of Colorado.

Hoping that you may be able to early supply the rapid service here suggested, I remain,

Very respectfully,

SIDNEY M. BARNES,
United States Attorney for District of New Mexico.

[The paper last read was marked by the clerk 10 E.]

The COURT. He recommends daily service, does he?

Mr. TOTTEN. Yes, sir.

Mr. BLISS. We shall present them all. The next is a jacket:

Date, April 24, 1879. State, Colorado.

No. of route, 38145. Termini of route, Ojo Caliente and Animas City. Length of route 154 miles. No. of trips per week, one.

Contractor, J. W. Dorsey. Pay \$1,467.78 per annum.

June 7, 1878, the office of Pagosa Springs was established on this route. D. C. indicates that the distance was thereby increased 20 miles.

So far, in red ink. Now, in black :

1st. From July 1st, 1878, allow contractor \$190.62 per annum additional pay, being pro rata on twenty miles; increase in distance caused by embracing Pagosa Springs next after Parkview.

2d. From July 1st to December 31, 1878, allow subcontractor \$125 per annum additional pay, being pro rata.

BRADY.

[The paper last read was marked by the clerk 11 E.]

This paper is headed :

U. S. POST-OFFICE DEPARTMENT, CONTRACT OFFICE,
Washington, April 29, 1879.

SIR: A change of schedule is desired on mail route 38145, on which J. W. Dorsey is the contractor, because of increase of service.

The service is three times a week.

Be careful to allow no more than 50 hours' running time each way.

It is signed Thomas J. Brady, and has the stamp of the Post-Office Department of May 31, 1879. It reads as follows :

We, the undersigned, postmasters at the terminal points of said route, and subcontractor upon the same, do hereby recommend that, although the service requires to be increased from two times a week to three times per week, yet we deem it immaterial to the interests of the people on said route as to the schedule time; and furthermore, deem it impracticable and almost impossible to run the mail each way in the fifty hours herein stated, for the following reasons:

The said post-route being a new one, the roads are mountainous and very rough; the Clama, Navajo, and Blanco, all quite large rivers, are not bridged over, and will necessarily have to be forded over, and they are very high and dangerous to cross or ford in the summer season, and in the winter the deep snows that fall all along the said route are a great obstacle in the way. Consequently we recommend that for the present the tri-weekly mail service on this route may be allowed to run upon a six days' schedule, remaining the same through the summer and winter.

JESUS HERNANDEZ,
P. M. at Ojo Caliente.
JOHN M. TREW,
P. M. at Animas City.
ANTHONY JOSEPH,
Contractor.

Mr. WILSON. What is the date of that letter?

Mr. BLISS. That letter is dated on the inside April 29, 1879. It is stamped as received, May 31, 1879. Now comes a jacket dated April 12, 1879, with the same description of route:

See memorandum and petitions inclosed.

Two trips	\$3,316 80 per annum.
Expedition	8,457 84 " "
Total, inc.....	\$11,774 64 " "

That is in red ink. Now in black:

1st. Increase service two trips per week from May 12th, 1879, and allow contractor \$3,316.80 per annum additional pay, being pro rata.

2nd. Reduce running time from ninety (90) hours to fifty (50) hours from May 12th, 1879, and allow contractor \$8,457.84 per annum additional pay, being pro rata.

Mr. WILSON. Is that signed?

Mr. BLISS. Yes; the order is signed "Brady." Inclosed in that jacket are numerous papers:

WASHINGTON, April 24th, 1879.

Hon. T. J. BRADY,
Second Assistant P. M. General:

SIR: I beg to transmit herewith a petition signed by the most prominent citizens of New Mexico, including the chief military as well as civil officers of that Territory, urging an increase of mails on the route named in the petition. As I am personally familiar with the facts stated, and know the necessity for this additional service, I simply write this to add my testimony to theirs.

Yours, truly,

S. W. DORSEY.

Mr. WILSON. What is the date of that?

Mr. BLISS. This is dated April 24, 1879. Inclosed in the same jacket is the following letter:

WASHINGTON, D. C., April 14th, 1879.

Hon. T. J. BRADY,
Second Assistant P. M. General:

SIR: I beg to transmit herewith my proposition to carry the mail on route 38145, from Ojo Caliente to Parrott City, Colorado, on an expedited schedule.

I have to state that there is an error in the distance of more than forty miles. The actual distance is about 190 miles, which will be shown in due time by distance tables. The road is a difficult one, with many large mountains and streams to cross.

Hoping that the proposition will be acceptable,

I am, very respectfully,

J. W. DORSEY.

(The four papers just read were marked by the clerk, respectively, 12 E, 13 E, 14 E, and 15 E.)

Hon. THOMAS J. BRADY,
Second Assistant P. M. General:

SIR: The number of men and animals necessary to carry the mails on route 38145,

from Ojo Caliente to Parrott City, three times a week, is three men and seven animals. The number necessary to carry the same mail on a reduced schedule of eighty hours is nine men and twenty-seven animals.

Respectfully,

JOHN W. DORSEY,
Contractor.

STATE OF VERMONT,
Addison County :

Sworn and subscribed to this 11th day of March, 1879.

RUFUS WAINWRIGHT,
Clerk of the Addison County Court.

[The paper just read by Mr. Bliss was submitted to the clerk to be marked for identification, and was by him marked 16 E.]

WASHINGTON, April 23, 1879.

Hon. T. J. BRADY,
Second Assistant P. M. General :

SIR: I have the honor to transmit herewith a statement of the number of men and animals it will require to run the route from Parrott City to Ojo Caliente, on a schedule of fifty hours and three trips a week. Considering the character of the country, the route contains to be crossed, and the streams to be forded, the time proposed of (50) fifty hours is equal to seven miles an hour on an ordinary route. It is an extraordinary undertaking to make this time, but believing that the interests of the public service, as well as that of the people of this section demand it, I will undertake it.

Respectfully,

J. W. DORSEY.

Appended to that is the following:

Hon. THOMAS J. BRADY,
Second Assistant P. M. General :

SIR: The number of men and animals necessary to carry the mail on route 38145, on the present schedule and three trips a week, is five men and fifteen animals. The number necessary on a schedule of fifty hours, three times a week, is twelve men and forty-two animals.

Respectfully,

JOHN W. DORSEY.

CITY OF WASHINGTON,
County of Washington :

John W. Dorsey, being duly sworn, deposes and says, that the above statement is true, as he verily believes.

Sworn to and subscribed before me this 26th day of April, 1879.

W. F. KELLOGG,
Notary Public.

[The paper just read by Mr. Bliss was submitted to the clerk to be marked for identification, and was by him marked 17 E.]

Mr. INGERSOLL. In this case, if the court please, I make the same motion. Of course, I do not want to argue it. I make the motion that the oath and everything of that character be excluded, because it is not mentioned in regard to this route in the indictment. It is the same motion as made before.

The COURT. The same reasons that were given yesterday in the other case will apply to this.

Mr. INGERSOLL. It is overruled, as I understand.

The COURT. It is overruled; yes, sir.

Mr. INGERSOLL. Then I except.

Mr. BLISS. In the same jacket is the following:

Hon. T. J. BRADY,
Second Assistant Postmaster-General :

The undersigned citizens of Santa Fé and vicinity most earnestly recommend that the mail service on the route from Ojo Caliente to Parrott City be increased to a daily, and the speed increased to four miles an hour.

western New Mexico and the southern part of this route, and the country now has a large population which will be of great service to the people by immigration. This route will be of great service to the people, and indirectly of the whole business community of this Territory and I urgently ask that this increase be ordered at once, and will humbly pray, - &c.
That is signed by two sheets of petitioners who give their name - s and
r business :

Henry M. Atkinson, surveyor-general.
D. M. Thomas, U. S. Indian agent.
Geo. A. Smith, U. S. revenue collector.
David J. Miller, chief clerk surveyor-general's office.
John Sherman, jr., U. S. marshal.
And so on.

The COURT. That will be equivalent to eighty hours.
Mr. INGERSOLL. After it is cut off, it is equivalent to fifty hours.
They cut off a part of the route on the two hundred miles. [To Mr. Wilson.] Will you ask whether that is a petition inclosed in Mr. Dorsey's letter?

Mr. BLISS. There is nothing in the jacket to show what was inclosed.
Mr. Dorsey's letter comes in the jacket with all these papers, and there is nothing to show which paper was in Mr. Dorsey's letter.
Mr. INGERSOLL. It is an important point right here. Mr. Dorsey wrote a letter inclosing that petition. He inclosed a petition, he said, signed by the officers of the Territory—the prominent civil and military officers of the Territory. Now, there is no other such petition in these papers. I ask these gentlemen if it is not the petition that was in Mr. Dorsey's letter?

The COURT. Your inference seems to be pretty strong.
Mr. MERRICK. That is a matter of argument. Of course, if we knew we would say.

Mr. INGERSOLL. Now, I ask that the jury may look at that letter and the petition.

The COURT. The jury may look at them.
[The paper just read by Mr. Bliss was submitted to the clerk to be marked for identification was by him marked 18 E, and together with the letter of Mr. Dorsey was submitted to the jury for inspection.]

Mr. WILSON. [Submitting jacket to Mr. Bliss, and indicating.] "Memorandum and petitions inclosed." That jacket contained a memorandum.

Mr. BLISS. I am going to read everything that is in this jacket order in which I have got them. If it covers the memorandum, I do not know will get it. If it does not cover the memorandum, I do not know it is.

Mr. INGERSOLL. If that paper is not there, it ought to be a for.

Mr. BLISS. In the same jacket is the following letter :

SANTA FÉ, NEW MEXICO
April

D. C. : - on the n

a part of this military district, with headquarters at Santa Fé. At present it takes two weeks, usually three, to communicate and receive answer, when with a fair wind, with speed increased, it should take but four days. The commanding general, Edward Hatch, and chief quartermaster, Major Dana, signed the petition very promptly, having been annoyed so long by the vexatious delays of slow mails in communications.

As a result of the establishing of a permanent post at Fort Lewis has been to cause a great increase of population in its vicinity, and the necessity for rapid communication has increased with equal rapidity.

Very respectfully, your obedient serv't,

ED. WEBSTER.

WILSON. Who is Ed. Webster ?

BLISS. I hav'n't the remotest idea. There is a paper inclosed containing a calculation identified as in Mr. Turner's handwriting, headed : "Present" 5, 15, total 20 ; "Proposed" 12, 42, making 54, deduct 20, leaving 34 ; and then some other calculation.

The last three papers read were submitted to the clerk to be marked for identification, and were by him marked, respectively, 18 E, 19 E, 20 E.]

The next paper is a letter, and is as follows :

HEADQUARTERS, DISTRICT OF NEW MEXICO,
Santa Fé, N. M., April 17th, 1879.

DEAR GENERAL : I shall be thankful for a daily line to Pagosa. There are large settlements west of the new Fort Lewis, which it will benefit greatly. If the petition from here will have any influence, it has signers enough to insure it.

Yours, truly,

EDWARD HATCH.

Wm. S. W. DORSKY,
Washington, D. C.

INGERSOLL. Who is Edward Hatch ?

BLISS. I suppose him to be an Army officer, sir. I am not on the stand, and I am not allowed to testify.

INGERSOLL. He was the general commanding out there.

MERRICK. I don't know who he was.

INGERSOLL. I do.

MERRICK. Then, go upon the stand.

INGERSOLL. I don't want any of your talk.

MERRICK. I shall certainly interpose to arrest this perpetual back of me, intended for the jury, and which must be testified to on the stand if the parties propose to state those things as facts.

COURT. It does not amount to anything and it is better to be done.

The paper just read was submitted to the clerk to be marked for identification, and was by him marked 21 E.]

BLISS. The next paper contained in the same jacket is as follows :

SECRETARY'S OFFICE, TERRITORY OF NEW MEXICO,
Santa Fé, N. M., April 15th, 1879.

Honorable the POSTMASTER-GENERAL :

In view of the rapid and increasing settlement of Northwestern New Mexico, and Northwestern Colorado, with important mineral and agricultural interests developed and developing, I heartily concur in the efforts being made to establish daily mail communication between Ojo Caliente, New Mexico, via Pagosa Springs to Parrott City, Colorado.

I am, Sir, the honor to be, very respectfully,

W. G. RITCH.

The letter just read was not submitted to the clerk to be marked.]

The next paper is as follows :

NEW YORK, April 14th, 1879.

Hon. D. M. KEY,
Postmaster-General, Washington, D. C. :

DEAR SIR: Some time during the winter I indorsed several petitions asking for increase of mail service from Parrott City to Ojo Caliente to three times a week and with a faster schedule.

I learn this increase has not yet been made, and I write again to urge you to make the order for it.

Hoping that you will consider this at once,
I am, truly yours,

J. B. CHAFFEE.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 22 E.]

The next paper is as follows :

COLORADO SPRINGS, COL., April 16th, 1879.

Hon. POSTMASTER GENERAL,
Washington, D. C. :

SIR: In view of the rapidly developing condition of Southwestern Colorado, I would respectfully request your attention to the subject of increasing the service on the route from Parrott City via Pagosa Springs, Colorado, to Ojo Caliente, N. M. This country is filling up very rapidly, and daily service is really due those people, and I respectfully suggest a daily mail on the routes named.

Respectfully,

THOMAS M. BOWEN,
Judge 4th District.

[The paper just read by Mr. Bliss was submitted to the clerk to be marked for identification, and was by him marked 23 E.]

The next paper is as follows :

To the Hon. D. M. KEY,
Postmaster-General :

SIR: We, the undersigned citizens of Ojo Caliente, N. M., and vicinity, supplied by mail route No. 38145, from Ojo Caliente to Parrot City, Col., would respectfully represent that the service as now carried, viz, one time a week, is entirely inadequate to our wants in that behalf; that the country through which this route now runs is already thickly settled besides; and increasing immigration is steadily pouring into the country, and that the mail now is nearly always delayed, [particularly third-class matter, in consequence of its great bulk and weight.

We would, therefore, very respectfully but most urgently request and petition you to have service on this route increased to at least three trips a week and on a shorter schedule; and we would ever pray.

Respectfully,

[The paper just read was submitted to the clerk to be marked, and was by him marked 24 E.]

Mr. INGERSOLL. I ask that the indorsement on 21 E be read, as it is a part of the paper. I ask that now.

The COURT. The letter has been read, and it is well to read the indorsement.

Mr. BLISS. I will read it, sir.

1879, April 26th.

Letter of General Edward Hatch in reference to increase.

Mr. INGERSOLL. That is all. When the gentleman said he did not know who he was, there was an indorsement stating who he was. And I would like to say another thing. As notice has been given of non-intercourse by the attorneys on the other side, I hope that they will not address me unless I address them.

Mr. MERRICK. I should not allow an address from Mr. Ingersoll, as far as I am concerned.

Mr. INGERSOLL. Then don't speak to me.

Mr. MERRICK. I shall not, and I won't allow you to speak to me.

Mr. INGERSOLL. I don't think you could help it, nor a hundred like you.

Mr. BLISS. It has been some weeks since I addressed anything to Mr. Ingersoll.

The COURT. [To Mr. Bliss.] What point do you propose to make by reading these petitions?

Mr. BLISS. We have no desire to read these petitions, if the other side do not insist upon it.

The COURT. I have not heard them insist.

Mr. WILSON. I do insist upon it, because I want the jury to know exactly upon what General Brady made these orders increasing and expediting the service.

The COURT. Well, the increase and expedition were allowed, and they were allowed in consequence of these papers.

Mr. WILSON. Certainly. Now, if your honor will allow me, they say that General Brady made these increases and expeditions when they were not needed, he knowing that they were not needed. Now, I want the jury to see that this was pressed upon him by these Army officers, by this United States district attorney, by all these officers of the Territory, by these Senators, Senator Teller and Senator Hill and ex-Senator Chaffee, and so on, for quantity. The charge is that—

The said Thomas J. Brady did fraudulently make, sign, and file in the said office of the Second Assistant Postmaster-General, a certain order in writing for increased and additional service in carrying and transporting the said mails on and over the said post-route numbered 38145, and for the allowance of increased pay and compensation to the said John W. Dorsey and J. L. Sanderson, and for the benefit, gain, and profit of the said John W. Dorsey, John R. Miner, John M. Peck, Stephen W. Dorsey, Harvey M. Vaile, Montfort C. Rerdell, Thomas J. Brady, and William H. Turner, the said increased service then and there not being lawfully needed and required, as he, the said Thomas J. Brady, then and there well knew, as aforesaid.

The COURT. Well, I understand all that. Now, I want to know from the prosecution whether they claim that the increase of service and the expeditions that were allowed in this case went beyond these petitions; that they were not asked for by these petitioners?

Mr. BLISS. Our claim, sir, with reference to this route is, that these petitions in many of their statements, as to the filling up of the country, and everything of that sort, the condition of the country, were not correct, and the Assistant Postmaster-General had notice of that fact. And, moreover, that the time, the increase based upon these petitions, placing the time down to fifty hours, was an increase to a speed over that route which it was impossible to make. That is our claim. The genuineness of these petitions, certainly the genuineness of the bulk of them, I am not aware that we attack in any manner.

The COURT. You claim, then, as I understand, that the expedition granted went beyond the petitions?

Mr. BLISS. Went beyond what General Brady should have granted upon all the evidence before him. I do not say that it went beyond the petitions. As I say, we have no desire to read the petitions, and we have no objection to reading them except for the time it takes.

The COURT. That is a very serious objection. You are claiming that this was a fraudulent allowance on the part of General Brady. So far as I have heard these petitions they do not tend to establish that charge. And why the court and the jury and everybody should be detained listening to evidence that don't even seem to tend to make out the charge I do not understand.

Mr. BLISS. Only that reading them shows that the order is to be based on them, and unless the court excuses us we cannot have them read.

Mr. WILSON. We want them read, because we say they violate General Brady entirely, as they have in every case gone into an indictment.

The COURT. The prosecution say that, taking all these petitions together, there were sufficient facts before the Assistant Postmaster General to require that he should have restricted the expedition to a longer time than he actually granted. Is that it? That is not to have required so much expedition on the route?

Mr. BLISS. Yes, sir.

Mr. WILSON. They are proposing to try in this case the question whether he made the schedule a little too short or a little too long to have the jury pass upon that question. That is what they are proposing.

The COURT. I cannot say that the evidence is incompetent before the jury. If the prosecution contend that these papers show that Brady abused his trust in granting expedition for fifty hours—requiring expedition fifty hours—when he ought to have known that the expedition ought not to have been to that extent, I do not know that I can exclude this testimony and save the time.

Mr. BLISS. That is our claim, sir.

Mr. WILSON. If that is their claim, let me suggest that they present their petitions before the jury, and let the jury determine whether it is or not.

The COURT. That is what they are doing. But, as the petitions do not seem to sustain the claim as far as they had gone, to make a case, I did not know but it might save some time not to read them further. If the gentlemen say that these petitions will show that Brady violated his trust, requiring expedition to the fifty hours, they, or their counsel, may go on reading the papers.

Mr. BLISS. Your honor does not understand it. We do not claim that these petitions show that. We base it upon the whole evidence and propose to present in connection with this route.

The COURT. These petitions claim in that way. That is what they claim. The petitions tend to show that Brady abused his trust by allowing expedition for fifty hours, and paying an extravagant price for it.

Mr. WILSON. Does your honor mean to say the petitions tend to show that, or that that is what the prosecution say?

The COURT. That is what they say.

Mr. WILSON. Then let them read them.

The COURT. The petitions will have to go in.

Mr. BLISS. Very well, sir.

The indorsement on the last petition is as follows :

We respectfully recommend the increase of service herein prayed for.

H. M. TILGNER
N. P. HILTON

I will not read the red ink indorsement unless I am asked to do so.

The COURT. How much expedition is asked?

Mr. BLISS. Three trips a week, and on a shorter schedule. The paper is from the citizens of Pagosa Springs, Colorado, and is identical in language with the one I have just read. Perhaps, I can be excused from reading it when I say it is identical in language, and it is signed by twenty-five people.

[The paper just read was submitted to the clerk to be marked, and was by him marked 25 E.]

Mr. WILSON. What is the indorsement?

Mr. BLISS. [Reading:]

We respectfully recommend the increase of service herein prayed for.

H. M. TELLER.
N. P. HILL.

It asks for a shorter schedule.

The COURT. And increase of service?

Mr. BLISS. Yes, sir.

The next petition commences, "We, the undersigned, citizens of Park View, New Mexico, and vicinity," and is in, I think, identically the same language. It is signed by a page of petitioners.

The COURT. That is enough. It saves a great deal of time to state what they are.

Mr. INGERSOLL. I would like to have them read.

The COURT. They can be used when it comes to your argument.

[The petition just referred to by Mr. Bliss was submitted to the clerk to be marked for identification, and was by him marked 26 E.]

Another petition from the citizens of Pine River, Colo., and vicinity, which is identically the same thing, I think.

[The petition referred to was submitted to the clerk, and was by him marked 27 E.]

Another petition from the citizens of Navajo post-office and vicinity, signed by the postmaster there, and a little over a page of petitioners, which I think is in identically the same language as the other.

[The petition referred to was submitted to the clerk to be marked, and was by him marked 28 E.]

Mr. MCSWEENEY. If the court please, the objection to this saying that the defendants can afterwards read them, is this: We may make a motion in the ultimate determination of this case that will answer that position of the gentlemen always, "You can read them when it comes to your side." You have remarked on many occasions that you were permitting this testimony to go in now as proof of the circumstances, the historic portion of the case. You let the contracts go in, you let proof that there was a public department, and all that, go in, as your honor frequently said, to give a bird's eye view and history of the case, for whenever we touched your honor upon the subject, "Is this an overt act," you would frequently reply, "No, sir; we are simply getting the surroundings to see whether there is anything tending to prove a conspiracy," on which you would render judgment on a plea of guilty, and it is in that view that this is going in. Now, to partly read a paper and say, "Well, in the future the defense may read that," I object to it. I think it ought all to be in, so that when we come to address you at a certain stage of this proceeding, to ask what is before us—certain motions that I need not indicate now to call your honor's judicial attention to—to give the weight to this testimony that you may think it is entitled to, its avoirdupois, then it might be said we offer no testimony on the motion we propose to make. Therefore, everything should be before the jury like, in a civil suit, a motion for non-suit. That is the only remark that I see fit to make this week.

The COURT. In answer to that, I will say if the case is to go to the jury the papers can be used before the jury. If the motion you refer to contemplates an arrest of the case, or is a motion to arrest the case without going to the jury, the court will look at the papers, so that it is not necessary, in my opinion, to read them now in full. They are

proved and in evidence, and all we want is a statement of their substance.

Mr. BLISS. Then follows another petition :

We, the undersigned, citizens of Tierra Amarilla.

And is identical, I believe, in language as the others. It is signed by about two pages of petitioners.

[The paper just referred to was submitted to the clerk to be marked for identification, and was by him marked 29 E.]

Then there is another petition :

We, the undersigned, citizens of El Rito, New Mexico, and vicinity.

Which is in precisely the same language as the other. Signed by Pedro J. Jaramillo, postmaster ; Jesus Ma. Jaramillo, Andres Romero, Daniel Trujillo, and about a page and a half of other petitioners.

[The petition just referred to was submitted to the clerk to be marked for identification, and was by him marked 30 E.]

Then comes a petition which is in different language, and, I suppose, must be read.

To the honorable POSTMASTER-GENERAL :

SIR : We, the residents of Northwestern New Mexico and Southern Colorado, and citizens thereof, respectively, having for a long time lived in the hope that the Post-Office Department would take action for our relief, inasmuch as our situation and the deplorable condition of our postal affairs has so often been complained of through the numerous petitions that have gone up, the mention of which we trust will suffice as an illustration of our case, our needs and wants having been therein set forth, and finally, believing that the general interest of the country would be advanced as well as the desideratum complained of thoroughly remedied, we respectfully suggest the establishment of a mail line to run at least weekly between Parrott City, Colorado, and Albuquerque, New Mexico, and respectfully request that the following places along said line be designated as post-offices, to wit: "Ute Farms" on Rio La Plata, with Samuel S. Rush as postmaster ; Flora Vista, on Rio Las Animas, with Hannibal H. Hord as postmaster ; Valley View, on Rio San Juan, with John W. Baker as postmaster ; Cañon Largo, at the mouth of Cañon Largo, on Rio San Juan, with Francisco Valdez as postmaster, and at Coyote, 40 miles west of Albuquerque, with ——— as postmaster, the post-offices herein suggested, all being within New Mexico.

Begging your prompt attention to the subject hereof, and trusting to your favorable consideration thereof, we remain, your petitioners, ever praying.

[The petition was submitted to the clerk to be marked, and was by him marked 31 E.]

This is in that jacket, your honor, but, as you see, relates to a place on beyond.

The COURT. It might be in a different direction altogether. It might be no part of this route.

Mr. BLISS. This seems not to be a part of this route. It says from Parrott City to Albuquerque.

The COURT. It might have been directly south.

Mr. BLISS. It is indorsed, sir.

October 31st, 1878.
38145. Col.

Which is the number of this route.

Petition for increase of service.

The COURT. It is for once a week.

Mr. BLISS. I do not know that it says that.

The COURT. You read it so.

Mr. BLISS. It does not specify anything, except that they have made their frequent complaints.

We, the residents of Northwestern New Mexico and Southern Colorado, and citizens thereof, respectively, having for a long time lived in the hope that the Post-Office Department would take action for our relief, inasmuch as our situation and the deplorable condition of our postal affairs has so often been complained of through our numerous petitions that have gone up, the mention of which we trust will suffice as an illustration of our case, our needs and wants having been therein set forth, and finally, believing that the general interest of the country would be advanced as well as the desideratum complained of thoroughly remedied, we respectfully suggest the establishment of a mail line to run at least weekly between Parrott City and Albuquerque, New Mexico.

It does not apply to this route.

The COURT. It refers to the establishment of a new route?

Mr. BLISS. Yes, sir.

Mr. WILSON. It refers to petitions first that have been sent up on route 38145, and then asks, as I understand it, for the establishment of a weekly line.

Mr. BLISS. That is a very good theory, sir, but on the 30th of October, 1878, it appears there had not been any petitions sent up in connection with route 38145. All the petitions were afterwards—

The COURT. [Interposing.] This paper seems to be a wanderer.

Mr. BLISS. It is a wanderer in a wrong place, unless the fact that it is included here with a wrong indorsement is worthy of notice.

Mr. WILSON. Who made that indorsement?

Mr. BLISS. I do not remember, sir. Your honor, I have got through with the contents of this jacket. It will take me a full hour to put in the rest of the record in this case.

The COURT. Go on fifteen minutes more. The court was the means of the waste of time at recess.

Mr. MERRICK. [Facetiously.] That is a strange administration of justice, that we should have to do penance for the court.

Mr. MCSWEENEY. We will not impose any fine on the court.

Mr. BLISS. The next paper is as follows:

H. M. ATKINSON,
Surveyor-General.

DAVID J. MILLER,
Translator and Chief Clerk.

UNITED STATES SURVEYOR-GENERAL'S OFFICE,
Santa Fé, New Mexico, April 14, 1879.

Hon. D. M. KEY,
Postmaster-General:

SIR: The citizens of this Territory and Southwestern Colorado, are very anxious for daily service on the route from Ojo Caliente, this Territory, via Pagosa Springs, to Parrott City, Colorado.

This route supplies all Northwestern New Mexico and Southwestern Colorado, and the large population now in those sections fully justifies a daily service on that route, and if the same can be ordered by you it will gratify our citizens here, as well as confer a great benefit upon the citizens reached by said route.

Very respectfully, your obedient servant,

HENRY M. ATKINSON.

The COURT. That is for increase of service alone?

Mr. BLISS. Yes, sir.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 32 E.]

The next paper is as follows:

TO the POSTMASTER-GENERAL,
Washington, D. C.:

As citizens of Ojo Caliente, we most urgently request that the mail service between this place and Parrott City, Colorado, be extended to Taos, our county seat, and increased to a daily instead as it is now. We also ask that the time on said route BE MADE FASTER.

This route supplies exclusively a large population, which is rapidly increasing, and

we feel that we have a right to ask the Government to grant us this favor. Hoping that our petitions will be considered favorably, and at once, we subscribe ourselves, your obedient servants.

That is signed by something over a page of names.

The COURT. They want daily expedition?

[The paper just read was submitted to the clerk to be marked, and was by him marked 33 E.]

Mr. BLISS. Inside of that jacket there is a letter, which is as follows:

OJO CALIENTE, RIO ARriba Co., N. Mex.,
July 19, 1879.

Hon. THOMAS J. BRADY,
Second Assistant P. M. General:

SIR: I have recommended the service on this route to be performed in five days' time each way, in view of the fact that the mail matter that accumulates at this office for Animas City and post-offices between is so large, bulky, and heavy that it will take a number of animals to pack the same when the service is only once a week. The condition of the roads is such that no better time can be recommended. I only recommend this as a summer schedule, as that time cannot be made in the winter.

The COURT. That is the five days' time.

Mr. BLISS. Yes, sir; the five days.

The two subcontractors now carrying the mail over this route, three times a week, have divided the route in two sections, connecting at Navajo post-office, which is the middle point between this office and Animas City, the terminus of the route, and to facilitate the above arrangement of the mail carriers, in order to make the service efficient. I deem it necessary to recommend a schedule of time which the mail carriers can comply with under their arrangement.

Very respectfully, yours,

JESUS HERNANDEZ, P. M.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 34 E.]

The next paper is a jacket dated April 23, 1881, describing the route as before, stating the pay to be \$31,343.76 per annum. The subcontractor is J. L. Sanderson, whose pay is \$18,666.64 per annum. That is in red ink.

Hon. N. P. Hill, U. S. S., recommends that the office at Durango be embraced on this route. The distance will not be increased.

This is in red ink also. Then in black:

From May 1, 1881, embrace the office at Durango next after Pine River, without increase in distance or pay.

FRENCH.

[The jacket just read was submitted to the clerk to be marked for identification, and was by him marked 35 E.]

Inclosed in that is the following proposition from the subcontractor

WASHINGTON, D. C., April 23d, 1881.

I will supply Durango office, on route 38145, without increased distance or pay.

J. L. SANDERSON.

And then a letter from Senator Hill, as follows:

U. S. SENATE CHAMBER,
Washington, April 20th, 1881.

Hon. THOMAS J. BRADY,
Second Assistant P. M. General:

DEAR SIR: I would respectfully request that Durango would be embraced on the route 38145, Ojo Caliente to Animas City. I am informed that it will add but little, if anything, to the distance, and Durango is at the present time the most rapid growing place in Colorado, and now has a population of two or three thousand people.

Yours truly,

N. P. HILL.

[The two papers last read were submitted to the clerk to be marked for identification, and were by him marked, respectively, 36 E and 37 E.]

The next is a jacket :

Date, January 5th, 1881. State, Colorado.

No. of route 38145. Termini of route, Ojo Caliente and Animas City.

Length of route, 174 miles. No. of trips per week, 3.

Contractor, J. W. Dorsey. Pay, \$13,433.04 per annum.

Subcontractor, J. L. Sanderson. Pay, \$8,000 per annum.

Postmaster at Price, Conejos County, Colorado, reports that his office is located directly on this route.

So far in red ink. Now in black ink :

From January 20, 1881, embrace Price, Conejos County, Colorado, between Pagosa Springs and Piedra, without change of distance or pay.

BRADY.

[The paper last read was marked by the clerk 38 E.]
Inclosed in that jacket is the following letter :

PRICE, CONEJOS Co., COLORADO.

December 21st, 1880.

Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General :

SIR: The petitioners for a post-office and mail service at Price, Conejos, Co., Colorado, were ambiguous. No special mail route is needed, no additional mail carrier required ; no additional expense to the P. O. D. nor to any one else is necessary.

The mail route from Ojo Caliente, N. M., to Animas City, Colorado, is traversed by buck-boards, carrying the mail for contractors Barlow & Sanderson, or Sanderson & Co., and they have made "Price" a station on the route at which they change horses and take meals.

And an order to the contractors to supply this office is all that is needed. It will work no hardship to the contractors, for the mail never passes over this route without changing horses and taking meals at the house in which this post-office is kept.

Then, must I pay a special mail carrier to supply this office from Pagosa Springs, or elsewhere, as is specified in an order of the honorable Postmaster-General on November 9, 1880 ?

Very respectfully, &c.,

BARZILLAI PRICE, P. M.

[The paper last read was marked by the clerk 39 E.]

The COURT. There was no expedition and no increase.

Mr. BLISS. No.

Mr. WILSON. And no increase of pay.

Mr. BLISS. It is necessary to show that this post-office was brought onto the line because of something subsequent. That is all. There was no money taken out of the Treasury by it.

Next comes a jacket :

Date, December 26, 1878.

State, Colorado.

No. of route, 38145.

Termini of route, Ojo Caliente and Parrott City.

Length of route, 172 miles.

No. of trips per week, one.

Contractor, J. W. Dorsey.

Pay, \$1,639.34 per annum.

Subcontractor states that he will discontinue service, to take effect December 31, 1878,

So far in red. The remainder in black :

Modify order of October 1st, 1878, [number 8536] so as to end December 31, 1878, subcontractor having notified the contractor that he will discontinue service on that date.

BRADY.

[The jacket last read was marked by the clerk 40 E.]

Inclosed in that is the following :

WASHINGTON, D. C., December 23, 1878.

Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General :

SIR : I transmit herewith telegram from J. H. Watta, subcontractor on route 38145, Ojo Caliente, formerly Garland, to Parrott City, notifying me that he will throw down the mails January 1st. I have to request that you will direct the auditor to stop payments to said subcontractor after December 31st, 1878.

I have taken the necessary steps to have the mails carried after January 1st on that route.

Respectfully,

JOHN W. DORSEY.

[The paper last read was marked by the clerk 41 E.]

The next is the following jacket :

Date, March 21, 1879. State, Colo.

No. of route, 38145. Termini of route, Ojo Caliente and Animas City.

Length of route, 154. No. of trips per week, one.

Contractor, J. W. Dorsey.

Pay, \$1,467.78.

Schedule desired as below :

L. Ojo Caliente Mon. at 6 a. m.

A. Animas City Frid. by 10 a. m.

L. Animas City Frid. at 1 p. m.

A. Ojo Caliente Tues. by 6 p. m.

Change as above.

BRADY.

[The jacket last read was marked by the clerk 42 E.]

Inclosed is a paper as follows :

U. S. POST-OFFICE DEPARTMENT,
CONTRACT OFFICE.

Wm. H. T.

Washington January 23, 1879.

SIR : A change of schedule is desired on mail route number 38145, on which John W. Dorsey is the contractor, because the service has been curtailed. Annexed herewith is a blank which the Postmaster-General requests you to fill up with such days and hours as will preserve the proper connection with other routes, and return to this office verified by your signature and by the signature of the postmaster at the other end of the route, and of the contractor. Or if they, or either of them, after proper consultation, shall not agree with you as to a schedule, let the reasons be given.

The service is once a week.

Be careful to allow no more than 100 hours' running time each way.

Respectfully, &c.,

J. L. FRENCH,
Acting Second Assistant Postmaster-General.

P. M., Animas City, La Plata County, Colorado.

On the attached sheet the following schedule :

The undersigned postmasters and contractors recommend the following departures and arrivals on mail route No. 38145, State of Colorado :

Leave Animas City at 1 o'clock p. m. Tuesdays or Fridays.

Arrive at Animas City at 11 o'clock a. m. Saturdays or Wednesdays.

Leave Ojo Caliente at 6 o'clock a. m. Monday.

Arrive at Ojo Caliente at 11 o'clock a. m. Saturdays.

John M. Trew, P. M. at Animas City, Colo.

Jesus Hernandez, P. M. at Ojo Caliente, N. M.

Anthony Joseph, contractor.

Dated, Ojo Caliente, N. M., February 27, 1879.

I, the undersigned, postmaster at the east end of route No. 38145, from Ojo Caliente, Rio Arriba County, New Mexico, to Parrott City, Colo., by these presents declare and state that by allowing the mail to start from this p. o. on Monday morning, and arranging things so that it will get here on Saturday evening a better connection with the adjoining routes can be had. The circumstance of being on the east side of the route enables me to decide that the mail will have a regular delivery at the neighboring offices than otherwise as recommended by p. m. Animas City.

JESUS HERNANDEZ,
Postmaster at Ojo Caliente, Rio Arriba County, N. M.

FEBRUARY 27, 1879.

Also inclosed :

I, the undersigned, subcontractor on mail route No. 38145, from Ojo Caliente, N. M., to Parrott City, Colo., do hereby state and declare that I cannot agree with the postmaster at Animas City, Colo., as to the schedule time given or recommended by him on the said route. My reasons are as follows, to wit: The service is only once a week, consequently the mails are very large, heavy, and bulky, particularly now that there is so much 3d-class mail matter going through the mails on this route. There are 9 or ten post-offices on the route, and at almost every one of them the mail-carriers are delayed. This route, passing, as it does, along the base of the San Juan mountains, traversing the many mountain streams, which are very high in summer and dangerous to ford, and again in winter the snow falls to such a great depth that it is utterly impossible to carry the mail on this route, as recommended by the p. m. of Animas City. I agree with the p. m. of Ojo Caliente, N. M., on the schedule of time that he recommends, as such an arrangement will preserve the proper connection with other routes. In testimony whereof I have hereunto set my hand and seal, in Taos, Taos County, and Territory of New Mexico, this 26th day of February, A. D. 1879.

ANTHONY JOSEPH. [SEAL.]

[The set of papers last read was marked by the clerk 43 E.]

The COURT. Adjourn the court.

At this point (3 o'clock and 30 minutes p. m.) the court adjourned until to-morrow morning at 10 o'clock.

FRIDAY, JUNE 23, 1882.

The court met at 10 o'clock a. m.

Present, counsel for the Government and for the defendants.

Mr. BLISS. When Mrs. Wilson was on the stand yesterday some question was raised as to her examination with reference to the papers upon the Lake View route. An expression was made that the parties desired to examine her upon that subject, but that the papers were not in court. Your honor dismissed Mrs. Wilson from the stand and she understood that she was through, but I have kept her here. She desires to go home, as she has a child that is suffering; but she is in the building, and if counsel desire to examine her I will bring her in and tender her for that purpose.

The COURT. Is that the wish of counsel on the other side?

Mr. WILSON. I would like to see the papers, Colonel Bliss.

Mr. BLISS. The papers are outside. I will send for them.

[The witness and the papers were sent for.]

ELIZABETH M. WILSON recalled.

By Mr. WILSON:

Q. Question. I wish to ask you if Mr. Schutz did not make an arrangement with you for carrying the mail temporarily on The Dalles and Baker City route, at the rate of \$14,000 a year?—Answer. I think Schutz and Marshbank carried the mail under temporary service.

Q. But did you not make an arrangement with them to carry it at \$14,000?—A. If you have such an arrangement with my signature, I did. I cannot remember the amounts. I do not try to. I know they carried the mail.

Q. When they did carry it they carried it under an arrangement they made with Mr. Hailey, did they not, and not with you?—A. There were two different kinds of arrangements made during that month.

Q. Let me see, now, if I can get this thing straight. Did you not in

the first place make an arrangement with Schutz to carry the mail \$14,000?—A. I do not remember whether that was in the first place in the second place.

Q. Now, did you not then make an arrangement with Mr. Hailey \$15,500, and did you not communicate that to the department, and not the department reply to you that you must get that service for money, and thereupon you made the second arrangement with Hailey for \$14,000; is not that the history of that matter?—A. It is something of that kind.

Q. Can you tell me why it was that the arrangement with Schutz \$14,000 that had been made with you prior to the time that you made the arrangement with Hailey for the \$15,000 was broken up?—A. I cannot tell you why. I only know that at the time the mail was to go out I did the best thing I could under the circumstances.

Q. Yes; but Mr. Schutz had his stock on the road, and was carrying the mail?—A. I cannot answer now anything with regard to why.

Q. Do you remember that you made two contracts for temporary service on the route from The Dalles down to Pineville?—A. I think probably I did. If you have two contracts there over my signature made them.

Q. I am not saying that I have or have not. I do not want you to be influenced in your answer about the contracts by the fact that I have papers in my hand?—A. No; I only say this, that what I did I did under the pressure of circumstances, and made it a matter of record and a matter of report, and not a matter of memory.

Q. Do you not remember that you made two arrangements; in the first place, did you not make a contract to carry the mail twice a week over this Lake View route from The Dalles as far as Pineville?—A. I remember that I tried to make at least eight or ten with different persons. I tried to make them and failed.

Mr. WILSON. I am speaking about the number of times a week.

Mr. MERRICK. If your honor please, it is apparent that Mrs. Wilson is perfectly willing to answer all the questions propounded to her. But I do not see myself what relation this has to the case before the court and so I call your honor's attention to the matter.

The COURT. It is cross-examination of your evidence in chief in regard to the contract.

Mr. BLISS. Oh, no.

Mr. MERRICK. No; it is another route. It is a route to which we did not make any reference at all; a side route.

Mr. WILSON. I will explain to your honor. This is not simply cross-examination as to the route with reference to which they examined her; but this route with reference to which I am examining her is one that is embraced in this indictment.

Mr. MERRICK. No.

Mr. WILSON. And one that is to be inquired into. She is going away.

Mr. BLISS. You are mistaken about it.

Mr. WILSON. Is it not in the indictment?

Mr. BLISS. No.

Mr. WILSON. Then I beg your pardon.

Mr. MERRICK. I did not like to stop you at first.

Mr. WILSON. I was mistaken; I have got the wrong number.

By Mr. BLISS:

Q. I will ask you a single question. On this route from The Dalles

to Baker City there was produced yesterday a written contract made by you, and there was also produced a letter signed by you and forwarded to the department. Can you now tell whether you made any other formal contract than this one [submitting to witness papers marked 1 D and 2 D]?—A. I do not believe I made any other formal contract. If I did it has gone from my memory. This appears to me to cover the ground.

By Mr. WILSON:

Q. Was there, about July, 1878, and shortly before that, difficulty in getting on the service on account of the Indian raids through that country?

The WITNESS. On which route?

Mr. WILSON. Well, I will take all that country around there. Take that route that runs down to Lake View, and then that country around by Baker City, and Canyon City, &c. Was that country overrun with Indians?

A. There were times when in the Indian difficulties that pervaded the whole country there must have been some little difficulty on or near the route. I do not remember that any contractor ever complained to me of it. On the Pineville route, particularly, there never was a word said by any one who refused to carry the mail.

Q. What route was that?—A. 44154 now I think; it is from The Dalles to Lake View. There never was a contractor or a bidder when I was trying to make this contract while the mails were lying piled up in the office who said anything on account of the Indians. It was the want of compensation; the impossibility to carry the mail at the pay that was given by the Government or authorized by the Government.

Q. The Government was trying to get the mail carried too cheap?—A. So they said.

Q. Now, do you not remember that these contractors had difficulty in putting on the service because of the Indians?

The WITNESS. If you will say which route, I will answer.

Mr. WILSON. Take, for instance, this Lake View route.

A. I never remember to have heard a word; if there was difficulty they were willing to take it, provided they could be paid for it; they were men who lived on——

Q. [Interposing.] Do you recollect any trouble that you had in getting subcontracts, or temporary contracts, on account of the Indian raids?—A. Not on account of the Indians; I had great difficulty in getting subcontracts, or temporary contracts, on account of the want of compensation.

Q. [Submitting a paper.] Now I will show you this, and ask you whether it has your signature. If it has, please read it to the jury, and see if it refreshes your recollection?—A. [Reading:]

The accompanying——

Q. [Interposing.] Is that your signature?—A. It is my signature, and my writing. [Continuing to read:]

The accompanying contract was executed July 3, and all mail given to J. B. Wilson. Since then news has reached this that all of the horses in the section of the country where his horses were have been driven off by the Indians, and that part of the road closed.

This refers, I believe, if my memory serves me, to the portion of the road lying south of Pineville, between Pineville and Lake View. That portion of the road was undoubtedly in a section of the country that was infested with Indians. If there was any difficulty between Pineville and The Dalles, I do not remember it at all. [Continuing to read:]

that part of the road is closed. I do not know if any further attempt will be made to carry the mails at present.

Q. That reminds you that there were Indian troubles there?—A. Most undoubtedly there were Indian troubles. The person with whom I made this contract, Mr. Wilson, certainly did carry the mail to Pineville. Beyond Pineville to Lake View I cannot remember. There were Indian difficulties then.

Q. [Submitting another paper.] Now, let me show you this and see whether you signed it, and whether it refreshes your recollection in any way about the matter.

The WITNESS. Shall I read it?

Mr. WILSON. Yes; if you will.

A. [Reading:]

I, Elizabeth M. Wilson, do hereby agree with Joseph B. Wilson to carry the mails on route 44154, county of Wasco, State of Oregon, till such time as the department may make further order, or for a period of three months from July 2nd, 1878, at a rate of compensation not greater than that of the old term. In case the present Indian war is to imperil the safety of the road to men and horses, the said Joseph B. Wilson is to carry the mail as far and over as much of the line as can safely be done.

Q. Does that refresh your recollection as to the condition of the Indian troubles there at that time?—A. It does not change my memory at all.

Q. There were Indian troubles at that time?—A. Certainly there were.

Q. And such Indian troubles as interfered with the transportation of the mail?—A. I provided for a possible interference in this contract. I do not remember that there ever was the least imperilment of man or horse or mail while the mail was carried. I do not remember on that route. There was on the other between The Dalles and Baker City.

Q. There was imperilment between The Dalles and Baker City?—A. I think there was; but not upon this route which I now refer to.

Q. I know; but I am only showing you that paper for the purpose of refreshing your recollection as to the condition of things there with reference to the Indians at that time.—A. This is precisely in accordance with my memory.

Q. Your memory is that there were troubles, and you put that clause in the contract because of the fact that these Indians were giving trouble in that region?—A. To be accurate, I would like to say that there were anticipated troubles. I provided for anticipated possible interruptions, as specified in the contract.

Q. Very well. I would as soon have it that way as any other way. I notice you use the term "the old contract."

Mr. BLISS. You are examining about the Pineville and Lake View route?

Mr. WILSON. I am simply calling her attention to the phrase in the contract.

Mr. BLISS. You have gone back to that route. We are not objecting; only—

Mr. WILSON. The examination that I am now pursuing is for the purpose of showing why it was that the contractors in that country did not stock the route and put on the service promptly on the 1st day of July.

Mr. BLISS. I do not object. We will get along quicker if you go ahead.

Q. In making up these temporary contracts, you are required to be governed by the price of the preceding contract, are you?—A. Yes, sir.

Q. And you cannot go in excess of that?—A. No, sir.

Q. That is what you mean by not exceeding the terms of the old contract?—A. Yes, sir.

By Mr. BLISS:

Q. The Lake View route runs from The Dalles, south, does it not?—A. Directly south, towards California.

Q. How far is Lake View from The Dalles?—A. That is one of the numbers that I do not carry in my head. I do not remember exactly.

Q. Is it one hundred miles, or more?—A. It is more than that. I think it is one hundred and twenty to Pineville, and Lake View is a great way beyond that, across the alkali desert.

Q. There was no trouble between The Dalles and Pineville?—A. I do not remember.

Q. [Submitting paper.] Please look at that letter and see if you wrote it?

The WITNESS. Do you wish me to read it?

Mr. BLISS. No; I want to know if you wrote it.

A. Yes, sir; I wrote it.

Mr. BLISS. That I desire to put in evidence in this connection. It is from the files of the department, and relates to the Indian wars on the Lake View route.

Q. You said that there were some Indian troubles on The Dalles and Baker City route. Did they prevent the carrying of the mail regularly between July and September during the temporary service?—A. The contractor was shot once. Exactly what he was doing, whether he was upon the mail-wagon when he was shot, or whether he was not, I do not know.

Q. Was the mail generally carried regularly from July to September under the temporary contract?—A. I think it was, unless there were a few trips—one or two trips, or a half a trip, or something of that kind; I do not remember. I remember one time the stage got in at 2 o'clock in the morning.

Q. Now, I will ask you, simply to prevent misapprehension, whether this J. B. Wilson with whom you are alleged to have made a mail contract, is any relation of yours?—A. None at all, sir.

Mr. BLISS. This Mr. Wilson here is not any relation, I suppose?

Mr. WILSON. I should not be ashamed of Mrs. Wilson.

Mr. BLISS. No; I was trying to decorate you.

Mr. WILSON. I should be very glad to have you do so.

Mr. BLISS. I now offer the letter:

THE DALLES, OREGON, July 1, 1878.

To the POSTMASTER-GENERAL:

SIR: J. M. Peck, contractor on route 44154, has failed to appear, either in person or otherwise, or called for said mail. I have been unable to make a temporary contract for the service on said route at the old rate of compensation, the present route and schedule calling for service which no one can give at present rates. The mails for that section lie now in this office. I have reported this condition to the postal agent. The Indian war renders service on this line a matter of the utmost importance.

Very respectfully,

E. M. WILSON, P. M.

[Indorsed:]

July 15, 1878. 44154. Postmaster reports that contractor has failed to commence the service, and that it is impossible to carry the mail on account of Indian depredations in the country through which the route passes.

I will have that marked, and will in due time prove who made that indorsement.

[The paper last read was marked by the clerk 44 E.]

The postmistress writes that the Indian war renders it very important to have service, and it is indorsed as saying that it is impossible to have service on account of Indian depredations.

Mr. WILSON. If you will defer your argument until after we go through with the testimony it will be much better.

Mr. BLISS. I am not making an argument. I am making a statement to the court.

By Mr. WILSON:

Q. Are you aware of the fact that Miner, Peck & Co. had made an arrangement with Mr. Hutchinson to carry the mail over this particular route to Lake View?

The WITNESS. Shall I give the facts as they occurred?

Mr. WILSON. Certainly.

Mr. MERRICK. Of your own knowledge.

A. Mr. Hutchinson was at The Dalles. I saw him there at the office and understood who he was, and we had a conversation with reference to the work which he was expecting to pursue.

Mr. MERRICK. No matter what the conversation was.

The WITNESS. I was simply stating the fact that I knew Mr. Hutchinson, and knew what he was to do.

Q. What was he to do?

Mr. MERRICK. Wait a moment. Let us see if we cannot shorten this a little. If you knew it from what he told you or from what somebody else told you, I presume the court will say it is not competent evidence. We do not want you to state what other people said to you.

Q. It was a part of your business to know who was going to carry these mails?—A. It was.

Q. And you informed yourself on that subject?—A. I did.

Q. Who was to carry the mail over this Lake View route?

Mr. BLISS. Your honor, the only pertinency of the Lake View business was as to the Indian troubles. It was brought in for that purpose entirely. We certainly cannot go into the whole business. — The route is not in the indictment.

The COURT. I thought we had passed that point.

Mr. BLISS. Mr. Wilson has returned to it again.

Mr. WILSON. Colonel Bliss put in evidence a letter which Mrs. Wilson wrote in which she says that the contractor, J. M. Peck, or Miner, Peck & Co., had made their arrangements with the subcontractor Hutchinson to carry the mails over that route and the subcontractor Hutchinson failed to do it, and in consequence of that failure she had to make a temporary contract.

The COURT. You can ask her.

Q. Now, Mrs. Wilson, please state how that was?—A. On the morning, I think of June 30, I ascertained by common rumor that Mr. Hutchinson had left town and gone away.

Q. Come back a little now. You said it was a part of your duty to know who was going to carry the mails, and you did inform yourself on that subject. Now, I ask you was Mr. Hutchinson to carry the mails over this Lake View route?

Mr. BLISS. I object. He says "you informed yourself by conversation with somebody else outside of the Government" that he had undertaken to carry the mail. I submit that that is not and cannot possibly be evidence.

The COURT. I do not understand her as saying that she had informed herself

Mr. BLISS. Mr. Wilson says, "You say you informed yourself."

The COURT. She can answer that. I understood her to say in her examination-in-chief on that matter that she heard it from rumor.

Mr. BLISS. Not from her examination-in-chief. I have not touched that question. There has been no examination-in-chief on that subject. I did not touch that question at all. There will not be any pretense that I did. I confined myself solely to the production of a letter that she wrote, saying that the contractor had not come for the mail, and that the service was very important. Now they want to show by hearsay, which she gathered somewhere, that they had arranged with some one to carry the mail on this route, not in the indictment, and that the other parties did not do it.

The COURT. If that is what you propose to ask, it seems to me it is not proper.

Mr. WILSON. If I were doing what Colonel Bliss attributes to me, I should think I was doing what is not proper.

Mr. BLISS. Please state to the court what it is.

Mr. WILSON. I will state exactly what it is. On the re-examination of Mrs. Wilson Colonel Bliss put in a letter which she wrote to the department, in which she states in substance that the contractor, Peck, had not made his appearance there to take the mails, and it therefore became necessary for her to make a contract temporarily. Now, I asked her the question, "Is it part of your duty to inform yourself as to who is to carry these mails;" and she said, "Yes, that is part of my duty." Now, I seek to prove by her that Peck & Co. had made a subcontract with Mr. Hutchinson to carry these mails, but on the very morning before Mr. Hutchinson was to take these mails and carry them, he disappeared and did not do it, and therefore these contractors, although they had made an arrangement to carry the mail according to contract by making a subcontract, were left in the position of being unable to put the service on; and hence, as the law provided, she arranged for the emergency by making a temporary contract. Now, I seek to show by the testimony of the postmistress, whose duty it is to know about these things, that these parties did make arrangements to carry these mails, but the arrangement failed because the subcontractor did not do what he agreed to. That was not their fault.

The COURT. If she can speak to that question of her own knowledge I will let it in.

Mr. WILSON. [To the witness.] Now, you can state about it.

Mr. BLISS. I understand your honor to say that if she can state of her own knowledge that Mr. Hutchinson had a subcontract to carry the mail she may do so.

The COURT. Yes.

Mr. WILSON. That is to say, that knowledge which she acquired in the course of her duty as postmistress.

The COURT. Oh, yes. If it is her own knowledge as to the matter whether acquired in or out of the course of her business she may speak. But she is not to speak from rumor.

Mr. WILSON. I do not ask her to speak from rumor. But suppose these parties came there and informed her?

Mr. BLISS. Who are these parties?

Mr. WILSON. Mr. Hutchinson. If he informed her that he had taken the subcontract to do that, it is information that she derives in her official capacity, and therefore, it seems to me, we have a right to give it to the jury.

Mr. BLISS. With reference to that I need only say a single word.

The COURT. I don't think the rule will go that far.

Mr. WILSON. Oh, well, we will prove it *aliunde*. I will excuse the witness.

[The witness then left the stand.]

Mr. BLISS. I now offer in evidence the following paper :

U. S. POST-OFFICE DEPARTMENT,
CONTRACT OFFICE,
Washington, May 26, 1879.

Wm. H. T.

SIR: A change of schedule is desired on mail route 38145, on which J. W. Dorsey is the contractor, because the service has been increased to 3 trips per week.

The service is 3 times a week.

Be careful to allow no more than 50 hours' running time each way.

Respectfully, &c.,
(Stamped signature)

THOMAS J. BRADY.
Second Assistant Postmaster-General.

P. M. OJO CALIENTE,
Rio Arriba County, New Mexico.

SCHEDULE.

The undersigned postmasters and contractors recommend the following departures and arrivals on mail route No. 38145, State of Colorado :

Leave Ojo Caliente Mondays, Wednesdays, and Fridays at 10 a. m.; arrive at Animas City Tuesdays, Thursdays, and Saturdays at 7 p. m. of the succeeding week.

Leave Animas City Wednesdays, Fridays, and Mondays at 6 a. m.; arrive at Ojo Caliente when convenient.

This mail is of only local importance from Pagosa Springs to Animas City. The mail for La Plata County comes via Silverton in 50 hours from Alamosa.

JESUS HERNANDEZ,
P. M. at Ojo Caliente, N. M.
JOHN M. TREW,
P. M. at Animas City, Col.
ANTHONY JOSEPH,
Contractor, Taos, New Mexico.

[The paper last read was marked by the clerk 45 E.]

The next paper is headed :

U. S. POST-OFFICE DEPARTMENT,
CONTRACT OFFICE,
Washington, June 23d, 1879.

SIR: A change of schedule is desired on mail route No. 38145, on which J. W. Dorsey is the contractor, in order to connect with route 38156.

The service is once a week.

Be careful to allow no more than 100 hours running time each way.

Inside is the schedule :

SCHEDULE.

The undersigned postmasters and contractors recommend the following arrivals and departures on mail route 38145, State of Colorado :

Leave Ojo Caliente, N. M., Monday, at 6 a. m.

Arrive at Animas City, Col., in five days.

Leave Animas City, Col., Saturday, at 10 a. m., or when convenient.

Arrive at Ojo Caliente, N. Mex., in five days.

JESUS HERNANDEZ,
P. M. at Ojo Caliente, N. Mex.
JOHN M. TREW,
P. M. at Animas City, Colorado.
ANTHONY JOSEPH,
Contractor, Taos, N. M.

Dated July 25, 1879.

Mr. WILSON. That has a stamped signature, has it?

Mr. BLISS. I presume so. I think all of these are in the habit of having stamped signatures. [After referring to paper.] Yes, this has a stamped signature.

[The paper just read by Mr. Bliss was submitted to the clerk to be marked for identification, and was by him marked 46 E.]

The next paper is headed:

U. S. POST-OFFICE DEPARTMENT,
CONTRACT OFFICE,
Washington, ———, 187 .

SIR: A change of schedule is desired on mail route No. 38145, on which J. W. Dorsey is the contractor.

The service is three times a week.

Be careful to allow no more than fifty hours' running times each way.

Mr. WILSON. That is in blank form?

Mr. BLISS. On a blank form. The words three times a week and fifty hours are written in. On the same sheet is the following:

SCHEDULE.

The undersigned postmasters and contractors recommend the following departures on mail route 38145, State of Colorado.

Leave Ojo Caliente, Mondays, Wednesdays, and Fridays, at 6 o'clock a. m. Arrive at Animas City, Tuesdays, Thursdays, and Saturdays, at 7 o'clock p. m., the succeeding week.

Leave Animas City, Wednesdays, Fridays, and Mondays, at 6 o'clock a. m. Arrive at Ojo Caliente when convenient.

This mail is of only local importance from Pagosa Springs to Animas City.

The mail for La Plata County comes, via Silverton, in fifty hours from Alamosa.

JESUS HERNANDEZ,

P. M. at Ojo Caliente, New Mexico.

JOHN M. TREW,

P. M. at Animas City, Col.

ANTHONY JOSEPH,

Contractor, Taos, New Mexico.

Pinned to that is the following similar schedule:

SCHEDULE.

The undersigned postmasters and contractors recommend the following arrivals and departures on mail route No. 38145, Territory of New Mexico:

Leave Ojo Caliente, Mondays, Wednesdays, and Fridays, at 6 o'clock a. m. Arrive at Ojo Caliente Tuesdays, Thursdays, and Saturdays, at 7 o'clock p. m., the succeeding week.

Leave Animas City, Mondays, Wednesdays, and Fridays, at 6 o'clock a. m. Arrive at Animas City, Tuesdays, Thursdays, and Saturdays, at 7 o'clock p. m.

We, the undersigned, deem it both impossible and impracticable under the present bad conditions of the roads, mountain passes, &c., &c., to recommend a shorter schedule of running time than six days each way as heretofore.

JESUS HERNANDEZ,

P. M. at Ojo Caliente.

JOHN M. TREW,

P. M. at Animas City.

ANTHONY JOSEPH,

Contractor Taos New Mexico.

Indorsed across this in red ink, is the following:

This schedule allows only 37 hours running time. Make new schedule allowing fifty hours.

That paper is indorsed as received at the Post-Office Department

May 31, 1879. The other one, June 28, 1879. They both come to be pinned together.

[The papers just read by counsel were submitted to the clerk to be marked for identification, and were by him marked 47 E and 48 E.]

The next is a similar letter dated October 17, 1879, but stamped October 22, 1879. It has "Wm. H. T." in the corner.

SIR: A change of schedule is required on mail route No. 38145, on which J. W. Sey, care M. C. Rerdell, Washington, D. C., is the contractor, because of increase of expedition ordered in April, 1879.

The service is three times a week.

Be careful to allow no more than fifty hours running time each way.

Respectfully, &c., &c.,

J. L. FRENCH,
Acting Assistant Postmaster-General

POSTMASTER OJO CALIENTE,
Rio Arriba Co., New Mex.

SCHEDULE.

Days and hours of service to be distinctly stated.

The undersigned postmasters and contractor recommend the following departures and arrivals on mail route No. 38145, State of Colorado:

O. C. Leave Ojo Caliente Monday, Wednesday, and Friday of each week at 7

A. C. Arrive at Ojo Caliente Wednesdays, Fridays, and Sundays of each week at 9 a. m.

A. C. Leave Animas City, Mondays, Wednesdays, and Fridays at 7 a. m.

O. C. Arrive at Animas City, Sundays, Wednesdays, and Fridays at 9 a. m.

JESUS HERNANDEZ,

P. M. at Ojo Caliente, N. M.

JOHN M. TREW,

P. M. at Animas City, N. M.

PEDRO J. JARAMILLO,

Contractor

Dated October 27th, 1879.

On the opposite page to that is the following:

We, after proper consultation, have agreed that the time recommended in the opposite for the arrivals and departures of the mail is the only time the mail can be successfully taken from one of the routes to the other.

JESUS HERNANDEZ,

P. M. at Animas City, Co.

PEDRO J. JARAMILLO,

Subcontractor

Please fill up inclosed blank and return without delay. No more than fifty hours running time can be allowed each way.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 49 E.]

The next is a letter:

[Anthony Joseph, proprietor of Medicinal Hot Springs and dealer in general merchandise, Taos and Ojo Caliente, N. M.]

TAOS, N. MEX., May 5th, 1879.

HON. THOMAS J. BRADY,

S. A. Postmaster-General, Washington:

SIR: On the 21st of March last, I forwarded to your office, per mail from Animas City, Colorado, two distance circulars, similar to those herein inclosed, and these which I have signed or filled out myself are duplicates of others that were duly signed by the postmasters on said route and are correct, except that there is a slight difference in distance from Park View, N. M., to Florida, Col. The distance as given in other circulars between the last two mentioned points was 94 miles by the lower road, but as the large rivers of Los Animas, Florida, Los Pinos, Piedra, and San Juan are

bridged over on the said lower route, therefore that route is impracticable during six months in the year, as the said rivers cannot be forded on account of high water; so that in order to make the mail service efficient, between Animas City and Park View, the service performed or mails will have to be carried via Pagosa Springs, as most of the above-mentioned rivers are bridged over on the said route, and consequently it is the only practicable route to carry the mail between the said points.

Yours truly,

ANTHONY JOSEPH.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 50 E.]

The next is a letter:

To the SECOND-ASSISTANT POSTMASTER-GENERAL:

In view and consideration of the fact and circumstance that usually the mail between Animas City and Ojo Caliente, on route No. 38145, arrives at the latter point within the 50 hours' schedule time at about 8 o'clock a. m., and the mail from Alamosa to Santa Fé arrives there at about 9 o'clock p. m., and the mail from Santa Fé to Alamosa arrives there about three o'clock a. m., it is therefore believed to be unnecessary to confine the carriers from Animas City to Ojo Caliente to the said fifty hours' time, wherefore the undersigned subcontractor on said route respectfully asks that [if not incompatible with the good of the service] the time for arrivals at Ojo Caliente be so changed as, to conform to the arrivals there of the other mails mentioned.

PEDRO J. JARAMILLO,
Subcontractor.

SANTA FÉ, N. M., Oct. 28, 1879.

As the above statement of facts is correct, and as I see no prejudice to the postal service likely to result from the change of time of arrivals prayed for, I respectfully recommend that the change be made.

JESUS HERNANDEZ,
Postmaster at Ojo Caliente.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 51 E.]

The next paper is a letter, and is as follows:

ANIMAS CITY, LA PLATA CO., COLO.,
April 14th, 1880.

SECOND ASSIST. P. M. GENERAL,
Washington, D. C.:

SIR: I have to inform you that the mail carriers on route 38174, Animas City to Farmington, and route 38145, Ojo Caliente, New Mexico, to Animas City, Colorado, have been compelled after a long and hard struggle against the elements to withdraw.

The past winter has been one of unusual length and severity, deep and drifting snow, forage all consumed by the army, and impossible to get any from the R. R., distant 200 miles, with two to four feet of drifting snow blocking up the road. The carriers have struggled with great energy and endured great hardships and lost many animals. It has been simply a physical impossibility to take the mails through on schedule time, and failing to do that they have received no pay whatever for the service they have rendered, and the terrible sufferings many of them have endured in trying to do their duty. There is good reason for believing that the contractors do not deal fairly with the subcontractors and carriers, but throw all the loss upon the latter, while they make more money out of the contract than they would if the service was performed exactly in accordance with the contract. I know such to be the case in one instance, and I have reason to believe it is pretty generally practiced on the frontier.

There has been no service on either route mentioned since March 31st. The subcontractor and carriers could do no other way, and have done the only sensible thing for them to do.

They have endured great hardships, lost their animals, and are in debt to all their friends for supplies, and not a dollar from the P. O. D. in payment for services rendered.

Respectfully,

JOHN M. TREW, P. M.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 52 E.]

To the honorable P. M. GENERAL:

We have the honor respectfully to recommend that the request of Subcontractor Jaramillo, on route 38145, and as we see no objection to the change, that the time of 50 hours between Ojo Caliente and Animas City be changed to 60 hours. The road is a hard one merely on account of the snows and swollen streams.

We make the recommendation in view and consideration of the important fact that leaving, as at present, either point at 9 o'clock p. m., and arriving at the other at the end of the 60 hours, the arrival would be in complete time for the first passing mail or mails concerned, and there would be no prejudice to the service or the community.

Very respectfully,

JESUS HERNANDEZ,
P. M., Ojo Caliente.
JOHN M. TREW,
P. M. at Animas City.

This paper is without date, but bears the stamp of the Post-Office Department of April 26, 1880.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 53 E.]

Then comes the jacket containing the last of these schedule circulars, which is as follows:

Date, 1880, April 28th. State, Colo.
Number of route, 38145.
Termini of route, Ojo Caliente and Animas City.
Length of route, 174 miles.
Number of trips per week, three.
Contractor, J. W. Dorsey.
Pay, \$13,433.04.
Subcontractor, P. J. Jaramillo.
Pay, \$6,200.
Schedule desired as below:
L. O. C. Mon., Wed., & Frid. at 7 a. m.
A. A. C. Wed., Frid., & Sun. by 9 a. m.
L. A. C. Mon., Wed., & Frid. at 7 a. m.
A. O. C. Wed., Frid., & Sun. by 9 a. m.
Change as above.

FRENCH.

[The jacket just read was submitted to the clerk for identification, and was by him marked 54 E.]

Then comes the schedule circular, dated Washington, D. C., January 8, 1880:

SIR: A change of schedule is desired on mail route No. 38145. The service is three times a week.

Be careful to allow no more than fifty hours' running time each way.

That is not signed by anybody on the face. The schedule is as follows:

The undersigned postmasters and contractor recommend the following departures and arrivals on mail route No. 38145, State of Colo.:

Leave Ojo Caliente, Mondays, Wednesdays, and Fridays, at 7 a. m.

Arrive at Animas City, Wednesday, Friday, and Sunday, 9 a. m.

Leave Animas City, Mondays, Wednesdays, and Fridays, 7 a. m.

Arrive at Ojo Caliente, Wednesdays, Fridays, and Sundays, at 9 a. m.

JESUS HERNANDEZ,
P. M. at Ojo Caliente.
JOHN M. TREW,
P. M. at Animas City.
J. W. DORSEY,
Contractor.
PEDRO J. JARAMILLO,
Subcontractor or Carrier.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 55 E.]

The next is a jacket, and is as follows :

Date, Feb'y 26, 1881. State, Colo.

No. of route, 38145.

Termini of route, Ojo Caliente and Animas City.

Length of route, 174 miles.

No. of trips per week, three.

Contractor, J. W. Dorsey.

Pay, \$13,433.04 per annum.

Subcontractor, J. L. Sanderson.

Pay, \$8,000 per annum.

Hon. N. P. Hill, U. S. S.; Hon. H. M. Teller, U. S. S., and Hon. J. B. Belford, M. C., personally recommend that the service on that portion of this route, from Pagosa Springs to Animas City, 59 miles, be increased to daily.

This route connected at Pagosa Springs with route No. 38, on which there is at present daily service. See petitions inclosed. Four additional trips cost, at pro rata, \$17,910.72.

That is in red ink. Now in black :

From January 15, 1881, increase service to seven (7) trips per week, and allow contractor \$17,910.72 and subcontractor \$10,666.64 per annum additional pay, being pro rata.

BRADY.

[The paper just read was submitted to the clerk to be marked, and was by him marked 56 E.]

Inclosed in it is the following letter :

L. M. TELLER.

WILLARD TELLER.

LAW OFFICE OF H. M. & W. TELLER

Denver, Col., Nov. 18., 1880.

Hon. T. J. BRADY,

Second Assistant Postmaster-General, Washington :

DEAR SIR: I have written a number of letters about mail service from the end of the D. & R. G. R. to Animas City. I now understand that Sanderson & Co. are carrying the mail on route that goes north 20 miles of the end of the track, so that it will require only 20 miles of new service to connect with an established line. This service is so much needed, and the people are making so much talk about it, that I am very anxious to have it ordered at once. We are having a very hard winter in the high mountains, and Silverton is practically without mail, and will be until this service is ordered.

Respectfully.

H. M. TELLER.

[The paper just read was submitted to the clerk to be marked, and was by him marked 57 E.]

The next is a printed petition, and is as follows :

DOLORES, COL., Oct. 20th, 1880.

Hon. HORACE MAYNARD,

Postmaster-General U. S., Washington, D. C.:

GENERAL: We, the undersigned, residents of La Plata County, Colorado, desire to respectfully invite your attention to the following statement, and petition for relief: First. That route No. 38155, daily, from Antelope Springs to Silverton, is compelled to cross the range, 12,000 feet above the sea, which flanks the so-called San Juan country to the east. Second. That for years past the mails have been very generally delayed, frequently for weeks consecutively, owing to the heavy snows which fall between the months of October and June. Third. That in addition to the interruption, and consequent loss resulting therefrom, many lives have been lost in attempting to carry a mail from Brewster's to Silverton, a distance of 21 miles. Fourth. That the recent heavy snow-fall has prevented the reception of mail from the East for the last nine days. Fifth. The injury to business and the loss of life is incalculably great, and owing to the comparative inaccessibility of the present route must so continue. And in consideration thereof we respectfully request and petition that a daily mail route be established from the end of the San Juan extension of the D. & G. Railway, which is now at Boydville, 25 miles from Park View, to which latter place the railway will be finished about November 15th next. The country between

eighteen miles north of Animas City, Colo., October 20, 1880 about two columns of petitioners.

The next is a similar printed petition, dated at Animas October 20, 1880, and signed by about twenty petitioners.

The next is a similar printed petition, dated at Animas October 20, 1880, and is signed by about fifty petitioners.

The next is a similar printed petition, dated at Animas October 20, 1880, and is signed by about ten or twelve petitioners. I think I have stated this paper correctly.

Mr. WILSON. Read the indorsement.

Mr. BLISS. I will read the indorsement. I read the letter closed this:

1880, Nov. 19. No. 38155. Colo. Hon. H. M. Teller refers petitions for mail service, Animas City, to D. & R. G. R. R.

[The paper was submitted to the clerk to be marked, and marked 58 E.]

Here is a letter in the same jacket, which is as follows:

[Stamped:] Inspection, P. O. Dept.

[Stamped:] Inspection, P. O. Dept., Feb. 23, 1891.

[Stamped:] Office of the Second Assistant Postmaster-General, Feb. 2

OJO CALIENTE, TAOS COUNTY, N. M., F

SECOND ASSISTANT POSTMASTER-GENERAL:

SIR: The mail service on the Alamosa, Colo., and Santa Fé, N. Mex., route has somehow changed, and the contractors (Sanderson & Co.) have been ordered to run from Alamosa, Colo., to Santa Cruz, N. Mex., a point some 25 miles from Santa Fé, N. Mex. I have had no official information from the P. O. Dept. to date, owing to the fact that I shall have to be ordered what to do with the mail at the west end of route 38145 [Animas City, Colo.,] and that [mail] originating at intermediate P. offices I respectfully inform you of the fact. The mail has been carried by Robert Kimber from my office to the railroad 15 miles east of my office. If the mail collecting in my office been taken to the railroad, this office and on route 38145 would have to do without any mail from either north or south.

Herewith I send a map, of course only showing, although not very precise, the geographical position of some of the places adjacent to this.

Awaiting your instructions in this case I subscribe,

Your most obedient servant.

The next paper is as follows :

OJO CALIENTE, TAOS CO., *March 10, 1881.*

SECOND ASSISTANT P. M. GENERAL,
Washington, D. C. :

SIR: Hereby I beg leave to call your attention to the fact that [as stated on my letter of the 13th ultimo] the mail is not taken from my office to the railroad line so as to send and receive mail from the north, south, and east. The discontinuance of the mail service in this section of the country has caused great inconvenience to the public in general, as I will further state. The contractors to carry the mail from and to my office are J. L. Sanderson & Co. My office is situated on the route commencing at Alamosa, Colo., and whose terminus is Santa Fé, N. Mex., so that all mail coming from the southern part of this Territory had to come through my office, which is more directly connected with the offices west of this place, and now we are deprived of the mail service in the part where it would do the best, i. e., from here to the Denver and Rio Grande Railway.

This office is the east extremity of route No. 38145. The route commences here and ends at Animas City, Colorado, and all mail matter originating between Animas City, all along the route, whose more direct course would and ought to pass by my office to make direct connection with the Alamosa and Santa Fé route, has been sent back towards Animas City so as to give it some outlet, as the regular route [or more properly speaking, service for due connection] was discontinued. The reason for discontinuing the service, as given me by the agent for J. L. Sanderson & Co., was that he had orders from the P. O. Department to stop the mail service between Alamosa and Santa Cruz, N. Mex. I had no official information from the P. O. Dept. to the effect, a circumstance which urged me to write to your office on the 13th ult., to which letter I have had no answer so far. The order to stop the mail service, I am told by the agent of J. L. Sanderson & Co., came some time in January last, and Robert Kimber, the mail carrier, kept on running the mail in hopes to get his pay from the department till the end of this month [that is, the 2nd, in the evening]. I addressed another letter to the P. O. inspector at Denver, Colo., Mr. Robt. A. Cameron, on the 3d instant, requesting him to let me know what course to take under the circumstances. I got no answer from him [have not to this date], and as we are in need of mail service, I respectfully address anew to your office earnestly entreating you give my letter attention and answer me what is to be done in the premises. This office is at a watering place much visited by a large number of invalids from different parts of the United States, and these parties wishing to have some correspondence with their families are certainly interested in having the mail running, besides this office holds and receives mail for an extensive area of country 20 miles north to 7 south. The valley is not thickly settled, as the proceeds of the P. O. might show, but what mail is to be sent from the above-stated tract of country, and sent to different parts, is to be handled here. I being acquainted with the nature, requirements, and geographical position of the surrounding country can suggest what service should be required, but owing to my official position I won't do so, to show that I am not interested any more than any other citizen or patron of this office. The railroad is 15 miles distant from this office. Should you require further information, I shall be happy to furnish it. Awaiting your instructions and orders on the subject already stated,

I remain, your most obedient servant,

J. HERNANDEZ, *P. M.*

[The paper just read was submitted to the clerk to be marked, and was by him marked 60 E.]

Mr. TOTTEX. When was that received in the department?

Mr. BLISS. I think in March, sir. It is stamped as received the 26th of March, 1881. The next is a letter, and is as follows:

H. M. TELLER.

WILLARD TELLER.

LAW OFFICE OF H. M. & W. TELLER,
Denver, Col., Nov. 13, 1880.

Hon. T. J. BRADY,
Second Assist. P. G. M., Washington :

DEAR SIR: I inclose a number of petitions for mail service from the end of D. & R. G. R. to Durango, in the county of La Plata. I have written you about this service before; it is indispensable, and the people must have it. I hope you will see the need of it and order it at once.

Yours,

H. M. TELLER.

Inclosed with it is a printed petition of the same form as I read before, but dated at Mancas, Colo., October 20, 1880, and is signed by a page of petitioners in double columns. It is indorsed :

This one of a great number of like petitions that I have sent to the Post-Office Department, and I repeat again, the service prayed for ought to be ordered at once. H. M. Teller.

[The papers just read were submitted to the clerk to be marked, and were by him marked 61 E and 62 E.]

The service asked for is from the end of the Denver and Rio Grande Railroad to the other road. The service is asked from the terminus of the Denver and Rio Grande Railroad [indicating on map], from here to here, they say in one of the petitions, twenty-five miles.

The next is a letter:

To his excellency the Governor, FREDERICK W. PITKIN,
Denver, Colo. :

SIR : We, the undersigned, engaged in commercial and other business, in Animas City and Durango, do most respectfully call your attention to the present condition of the postal service as established on route No. 38155, between Antelope Springs on the eastern slope, and Silverton on the western slope of the Continental Divide, the said route being at present the main artery of postal communication between the East and San Juan, La Plata, and a part of Ouray County, and Northwestern New Mexico.

The aforesaid route, via Grassy Hill, is located and established over one of the most inaccessible passes in the Rocky Mountains, and such is its inaccessibility that in the winter time, covering a period of six months, travel is wholly, or in a great part suspended, owing to a continuous blockade of snow.

Upon the postal service of this route the people and business men of Southwestern Colorado have depended for their mails, but in vain. At successive periods for the last three years, and for weeks at a time, no mail has been received over this route [except through the exertions of private individuals not connected with the mail service] owing to an impassable snow blockade or a failure of mail contractors through incapacity to carry out the terms of their contract, thereby jeopardizing and causing a delay in all business and monetary transactions in the section of country of which we speak. We therefore ask your excellency to use such means as may be within your power to influence or effect a change of the daily mail service from the aforesaid route via Grassy Hill from Antelope Springs to Silverton, to the Chama via the Denver and Rio Grande Railroad, the latter route [from Chama] being much lower in altitude and passable at all seasons of the year.

We are, very respectfully, your obedient servants.

Signed by John M. Trew, postmaster, and by a number of people who give their official designation.

The COURT. Are the terminal points on that petition ?

Mr. BLISS. The petition asks that a route known as the Silverton and Parrott City, which ran up to the north, 38155, should be changed and brought down to the point I pointed out to your honor, at Chama, and carried across there. That is the petition.

From the aforesaid route, via Grassy Hill, from Antelope Springs to Silverton, to the Chama, via the Denver and Rio Grande Railroad.

The COURT. The Denver and Rio Grande Railroad does not pass there.

Mr. BLISS. This Denver and Rio Grande Railroad is a gridiron sort of a thing.

[Mr. Wilson and Mr. Bliss explained to the court from maps the route referred to.]

Mr. BLISS. This letter is indorsed :

Executive office, Denver, Colorado.
I concur in this petition.

FREDERICK W. PITKIN,
Governor.

[The paper just read was submitted to the clerk to be marked, and was by him marked 63 E.]

The next paper is a petition from Parrott City, Colo., dated November 8, 1880, addressed to F. W. Pitkin, governor of Colorado, and signed by the county clerk, the county treasurer, the clerk of the district court, and three or four other officials.

Mr. TOTTEN. Who are they?

Mr. BLISS. The sheriff of the county, the county clerk, and the editor of a paper at Silverton. It is on the files of the Post-Office Department, and I presume was forwarded by Governor Pitkin, but does not bear his indorsement.

The petition just referred to was submitted to the clerk to be marked, and was by him marked 64 E.]

The next paper is a petition, and is as follows:

RICO, OURAY COUNTY, COLORADO,
October 20th, 1880.

the Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General, Washington, D. C. :

We, the undersigned citizens of Rico, and the Pioneer mining district, respectfully sent to you the following statement and petition.

Our mails have heretofore been received via Silverton. Since the recent storm, one Mr. Water, a subcontractor, carrying the mails from Antelope Springs to Silverton, has abandoned his route, and we have had no eastern mail for several days. During all last winter similar delays were the rule and not the exception. We would, therefore, petition that you order a daily route to be established from Boydville or the terminus of the San Juan extension of the Denver and Rio Grande Railroad to Animas City. This will obviate the necessity of packing the mails over any ranges. That you will give this matter your favorable consideration your petitioners will ever
Y.

The first petitioner is Delores News—"Solid."

Mr. WILSON. That is a solid man.

Mr. BLISS. And then there are three pages of petitioners signed in double columns. The indorsement is as follows:

I heartily indorse the within petition.

A. K. PRESCOTT,
P. M., Rico, Colo.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 65 E.]

The next is a petition, and is as follows:

RICO, OURAY CO., COLO.,
November 9th, 1880.

To his excellency F. W. PITKIN,

Governor State of Colorado :

Petitions have been sent to the Post-Office Department from Rico, Silverton, and Animas City, asking for the establishment of a daily mail route from the terminus of the San Juan extension of the D. & R. G. R. R. to Animas City, which if granted will avoid packing our mail over the range.

Your excellency can fully appreciate the annoyance and inconvenience to which this portion of San Juan is subjected by reason of delays in the receipt of our mails, and any influence you can bring to bear to secure a speedy establishment of the aforementioned mail route will be duly appreciated by the people of this section of Colorado.

That is signed by A. K. Prescott, postmaster at Rico, Colorado, and indorsed by the mayor, and is signed by a page of petitioners in double columns. That I believe concludes all the petitions upon that route.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 66 E.]

The next is a jacket, and is as follows:

Date, October 1, 1878. State, Colo.

Number of route, 38145.

Termini of route, Ojo Caliente and Parrott City.

No. 14336—63

Length of route, 172 miles.

Number of trips per week, one.

Contractor, J. W. Dorsey.

Pay, \$1,639.34 per annum.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of J. H. Watts (whose post-office address is Santa Fé, New Mexico), for service on this route, at \$1,075 per annum, from July 1, 1878, to June 30, 1882, has been filed in this office.

BRADY.

[The jacket just read was submitted to the clerk to be marked for identification, and was by him marked 67 E.]

Inclosed is a subcontract, made on paper, headed Miner, Peck & Co. "contract with subcontractor," reciting that whereas John W. Dorsey has become the contractor for transporting United States mail, that

This indenture witnesseth that on this 31st day of March, 1878, John W. Dorsey, party of the first part, and J. Howe Watts, party of the second part—

have made a contract that he should carry the mail on 38145, from Garland by Conejos, Ojo Caliente, El Rito, Tierra Amarilla, Park View, Florida, and Animas City to Parrott City and back once a week from the 1st day of July, 1878, to the 30th day of June, 1882, one round trip per week, \$1,800. It contains the provision for the subcontractor, bearing fines and deduction, and in case the route is expedited the subcontractor is to receive 50 per cent. It is signed by J. W. Dorsey, as the Government contractor, and by J. H. Watts, as subcontractor, and witnessed by John R. Miner.

Mr. INGERSOLL. If the court please, I object to the introduction of that subcontract. Just see what the indictment says:

And that thereupon, and in further pursuance of, and further to effect the object of their said unlawful, fraudulent, and malicious combination, confederacy, conspiracy and agreement as aforesaid, afterwards, to wit, on the 30th day of June, in the year of our Lord one thousand eight hundred and eighty, at the county and district aforesaid, within the jurisdiction of the said court, the said John W. Dorsey, John R. Miner, Stephen W. Dorsey, and Montfort C. Kerdell, did fraudulently send, and cause procure to be placed in the said office of the Second Assistant Postmaster-General, among the papers relating and pertaining to the said post-route No. 38145, a subcontract and agreement between the said John W. Dorsey and one J. L. Sanderson, dated the 12th day of June, in the year of our Lord one thousand eight hundred and eighty, for the said J. L. Sanderson to carry and convey the said mails on and over the said post-route, as aforesaid.

Then follows the charge of the increase so allowed by Brady. Then comes the order.

Now, there is nothing in this indictment showing that the contract is made with any person except J. L. Sanderson, and that is charged as a fraudulent subcontract. I raise the point under that charge that a subcontract with any other person cannot be shown. It is charged that it was sent fraudulently and filed. I do not know that they charge that the contract was a fraud; but they charge it was fraudulently sent and placed on the files of the department. There is not a solitary word in the indictment referring to any contract with Watts. I believe that purports to be a contract with one Watts. Now, I raise the single point upon this route, after having charged that a contract was entered into with one Sanderson, and that being the only charge in connection with this route, whether it is proper to introduce any other subcontracts.

Mr. BLISS. The Sanderson subcontract was subsequent to this, sir. This is introduced as showing, or, if nothing else, tending to show, the whole history of the transaction. It is the contract made by John W. Dorsey, as the contractor. It is witnessed by John R. Miner. It is headed Miner, Peck & Co., and it provides that all returns are to be re-

turned to Miner, Peck & Co., the collection orders to be returned unaccounted for to Miner, Peck & Co., duplicate copies of all reports to be sent to Miner, Peck & Co., and there is an indorsement to the same effect, that all papers are to go to Miner, Peck & Co. It is on the records of the department, and was placed there by Mr. Brady's order.

The COURT. It is introduced for the purpose of proving a circumstance, to show the combination between these parties.

Mr. BLISS. Yes, sir.

Mr. TOTTEN. What is the date of it?

Mr. BLISS. The date is the 31st of March, 1878. It was filed on the 1st day of October, 1878.

Mr. HENKLE. As to Mr. Miner, I object to it.

The COURT. The objection is overruled.

Mr. HENKLE. I want an exception. We all object.

[The paper was submitted to the clerk, and was by him marked 68 E.]

Mr. BLISS. Here is a torn letter which I have overlooked, and which should be read :

DENVER, COLORADO, *November 22nd, 1880.*

Hon. T. J. BRADY,

Second Assistant P. M. General :

DEAR SIR : I inclose another petition for mail service for the end of the Denver and Rio Grande Railroad to Animas City. The mail cannot reach Silverton and other points with any degree of regularity if sent over the route by way of Antelope Park. The people have been without a mail already for three weeks. I hope this service will be ordered at once.

Respectfully,

H. M. TELLER.

[The letter just read was submitted to the clerk to be marked, and was by him marked 69 E.]

The next is a jacket, and is as follows :

Date, 1879, Sept., 29. State, Colo.

Number of route, 38145.

Termini of route, Ojo Caliente and Animas City.

Length of route, 174.

Number of trips per week, three.

Contractor, J. W. Dorsey.

Pay, \$13,433.04.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of Pedro J. Jaramillo, whose post-office address is El Rito, Rio Arriba Co., N. M., for service on this route at \$6,200 per annum, from August 15th, 1879, to June 30th, 1882, has been filed in this office, subject to fines and deductions.

BRADY.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 70 E.]

Inclosed in this jacket is the following letter :

SANTA FÉ, NEW MEXICO, *September 22nd, 1879.*

Hon. SECOND ASSISTANT POSTMASTER-GENERAL :

SIR : I have the honor herewith to transmit for the use of your office my agreement or contract with John W. Dorsey for the transportation of the mails on route 38145 as subcontractor under him. I am informed that a subcontractor by furnishing the department his contract may receive the periodical payments for the services in drafts on the Treasury payable to him, and that this may be done in my case is the purpose of forwarding my contract. If I am mistaken, please inform me, and if the contract is in anywise defective or insufficient, please return it for perfection to my address here, post-office box 75.

Very respectfully,

PEDRO J. JARAMILLO.

P. S.—I would thank you for an early answer, so that at the end of the current quarter I may know how properly to proceed.

P. J. .

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 70½ E.]

The contract inclosed recites that John W. Dorsey has become a contractor.

Now, this indenture witnesseth, that on this 7th day of August, A. D. 1879, John Dorsey, party of the first part, and Pedro J. Jaramillo, of El Rito, New Mexico, together with José Romalo Martinez and J. Pifonio Lopez, his sureties, making the parties of the second part, have agreed as follows, to wit :

The said Pedro J. Jaramillo and his sureties, party of the second part, do jointly and severally undertake, covenant, agree, and do bind themselves to transport the United States mails on route No. 38145 from Ojo Caliente, New Mexico, to Animas City, Colorado, three trips per week and return from the 15th day of August, 1879, to the 30th day of June, 1882, inclusive, upon such schedule time, and for such additional trips as the Post-Office Department may from time to time direct, and in full and complete compliance with the requirements of the postal laws and regulations of the Post-Office Department of the United States, and subject to all requirements and liabilities of said contractor with said Post-Office Department, for the following sums to wit: Three trips a week, \$6,200 per year, provided this contract is approved by the said John Dorsey, his agent or attorney, on or before the 15th day of September, A. D. 1879, a copy thereof being written, and a copy thereof be returned to said second party within ten days from the date. The present schedule is fifty hours.

It is signed by John W. Dorsey, Government contractor, by M. C. Rerdell, his attorney in fact, Pedro J. Jaramillo, subcontractor, José Romalo Martinez and J. Pifonio Lopez, sureties, and witnessed by John W. Steel and a name which I cannot make out, but which looks like G. Couloadez. It is indorsed on the back :

WASHINGTON, D. C., August 18th, 1879.

In accordance with the terms of the within contract the same is hereby approved by the said John W. Dorsey, and a copy hereof returned to said first party.

JOHN W. DORSEY,
Contractor

By M. C. RERDELL,
His Attorney in Fact.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 71 E.]

The next paper is a jacket, and is dated October 25, 1879. The number of the route is 38145. It describes the route :

Subcontract filed on this route to take effect August 15th, 1879. Subcontractor reports that he commenced service September 1st, 1879. Contractor requests modification of order so as to take effect September 1st, 1879.

That is in red ink. Then in black :

Modify order bearing date September 29, 1879 (number 9910) so as to commence September 1st, 1879, instead of "August 15, 1879."

FRENCH

Inside is a request from the contractor for that change of the original order having given him pay fifteen days before he was entitled to it. He requested that it should be granted.

[The jacket and its inclosure were submitted to the clerk to be marked for identification, and were marked 72 E and 73 E.]

The next is a letter, which is as follows :

SANTA FÉ, NEW MEXICO, *June 26th, 1880.*

Hon. POSTMASTER-GENERAL,
Washington, D. C. :

SIR: I have the honor to request that my contract with John W. Dorsey, contractor, on postal route No. 38145, filed by me as subcontractor in the department, be transmitted to me at this place, if its withdrawal be admissible, I having been released from the contract, or, if its withdrawal be not allowable, that a formally certified copy of the same be furnished me, as it is important to me to have the contract or an authenticated copy as soon as practicable.

Very respectfully,

PEDRO J. JARAMILLO.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 74 E.]

The next is a jacket with the same description of route, pay \$13,433.04 per annum.

Contractor presented an agreement with subcontractor relative to withdrawal of subcontract.

That is in red ink. In black :

From July 1st, 1880, stop all payment to subcontractor.

FRENCH.

[The jacket read was submitted to the clerk to be marked for identification, and was by him marked 75 E.]

The jacket contains the following inclosure :

Whereas the undersigned, John W. Dorsey, United States Government contractor, by his attorney in fact, M. C. Rerdell, entered into a contract with Pedro J. Jaramillo, of New Mexico, by which said Jaramillo contracted to carry the United States mails between Ojo Caliente, New Mexico, and Animas City, Colorado, on route 38145, from the 15th day of August, 1879, to the 13th day of June, 1882, in consideration of the sum of six thousand two hundred [\$6,200] dollars per year for said John W. Dorsey, contractor for said route, which contract was dated August 7th, 1879 : Now, this writing witnesseth that the said John W. Dorsey, for and in consideration of the sum of five hundred dollars paid him by said Jaramillo, the receipt whereof is hereby acknowledged, and of the relinquishment and acquittance by Jaramillo to said Dorsey, and to the United States, of all claims for compensation for services already performed under said contract, has released and discharged, and hereby does forever release and discharge, said Jaramillo from said contract, and from all obligations and covenants in said contract mentioned to be kept and performed by him from and after the 30th day of June, 1880; and also from all claims and demands, actions and causes of actions of whatsoever name or kind that might arise or grow out of said contract from and after June 30th last aforesaid, as well also all such as may have heretofore arisen upon or grown out of said contract, or to arise or grow out of the same prior to June 30th, 1880, and the said Jaramillo, upon his part, in consideration of the release and discharge to him aforesaid, hereby doth release and discharge said John W. Dorsey from said contract and from all things by him to be done thereunder.

Witness our hands and seals the 8th day of June, 1880.

JOHN W. DORSEY.
By J. W. STEEL,
His Attorney in Fact.
PEDRO J. JARAMILLO.

Witness :

HENRY L. WALDO,
DAV. J. MILLER.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 76 E.]

The next is a jacket with the same description of route:

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of J. L. Sanderson [whose post-office address is St. Louis, St. Louis Co., Mo.] for service on this route at \$8,000 per annum, subject to fines and deductions, from July 1st, 1880, to June 30th, 1882, has been filed in this office.

FRENCH.

[The jacket just read was submitted to the clerk to be marked for identification, and was by him marked 77 E.]

Inclosed in the jacket is the contract reciting that whereas John W. Dorsey has been accepted as Government contractor for transporting the mails on route 38145 from Ojo Caliente, New Mexico, to Animas City, Colorado, one time a week and back ;

Now this indenture witnesseth, that on this 12th day of June, 1880, John W. Dorsey, the party of the first part, and J. L. Sanderson, Harley Sanderson, and H. C. Griffin, partners under firm-name of J. L. Sanderson & Co., making the party of the second part, have agreed as follows, to wit :

The said J. L. Sanderson & Company, party of the second part, do jointly and severally undertake, covenant, agree, and do bind themselves to transport the U. S. mails on route 38145, from Ojo Caliente, New Mexico, to Animas City, Colorado, three trips per week, and return, from the 1st day of July, 1880, to the 30th day of June, 1882, inclusive, upon such schedule time, and for such additional trips, as the Post-Office Department may, from time to time, direct, and in full and complete compliance with the requirements of the postal laws and the regulations of the Post-Office Department of the United States, and subject to all requirements and liabilities of the said contractor with said Post-Office Department for the following sums, to wit : Three trips a week per annum, \$8,000.00, additional trips *pro rata*. Present schedule, fifty hours.

That is signed by John W. Dorsey, Government contractor, by M. C. Rerdell, his attorney in fact, and by J. L. Sanderson, Harley Sanderson, and H. C. Griffin. It is witnessed by John W. Steel and H. C. Farrar.

Annexed to it are some papers showing a reference to the Assistant Attorney-General for an opinion as to its meaning, and it is returned. As Mr. Wilson suggests that I should read this indorsement, I will do so:

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., September, 16th 1881.

Respectfully referred to Hon. A. A. Freeman, Assistant Attorney-General for the P. O. Department, with the request that he will advise me whether the within agreement entitles the subcontractors to one-month's extra pay on the amount deducted for service dispensed with?

H. D. LYMAN,
Acting Second Assistant Postmaster-General.

POST-OFFICE DEPARTMENT,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, D. C., Oct. 7th, 1881.

Respectfully returned to the Second Assistant P. M. General, with the advice that, under the terms of this contract, the subcontractor is not entitled to any portion of the one month's extra pay.

A. A. FREEMAN,
Assistant Attorney-General.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 78 E.]

Mr. Bliss then offered in evidence the following schedule:

Statements and recapitulation of payments made to Dorsey, Miner, and Peck, their subcontractors and assignees, on nineteen routes below described.

Routes.	Termini.		State.	Pay accrued.	Fines and deductions, &c.	Remissions, &c.	Total payments.
	From—	To—					
38145	Garland ..	Parrott City.	Colorado.	\$51,593 51	\$14,611 76	\$1,635 98	\$32,637 73

Route No.	Terminal			Auditor's report.		Period for which paid	Pay per quarter.	Less fines and deductions.	Amount of payment.	Warrant or draft.		To whom paid	Contractor, assignee, or subcontractor.
	From—	To—	State.	No.	Date.					No.	Date.		
26145	Garland	Parrott City.	Colorado	27155	Oct. 30, 1876	3 qr., 1878	\$548 63		\$223 23	W. 11980	Nov. 14, 1879	B. H. Keyser, receiver	Assignee.
				14019	May 3, 1879	3 qr., 1878			16 40	W. 3745	May 3, 1879	H. M. Valle	Assignee.
				27154	Oct. 30, 1879	3 qr., 1878		38 10	920 65	W. 11368	Nov. 4, 1879	J. H. Watts	Subcontractor.
				14011	May 1, 1879	3 qr., 1878			31 25	W. 4061	May 6, 1879	J. H. Watts	Subcontractor.
				3087	Jan. 29, 1879	4 qr., 1878	457 40		16 40	W. 3745	May 3, 1879	H. M. Valle	Assignee.
				3096	Jan. 29, 1879	4 qr., 1878			141 09	W. 14371	Jan. 30, 1879	H. M. Valle	Assignee.
				14011	May 4, 1879	4 qr., 1878		9 80	958 86	W. 832	Feb. 14, 1879	J. H. Watts	Subcontractor.
				19109	April 25, 1879	1 qr., 1879	450 08		31 25	W. 4061	May 6, 1879	J. H. Watts	Subcontractor.
				14012	May 3, 1879	1 qr., 1879		21 08	381 25	W. 3468	Apr. 30, 1879	H. M. Valle	Assignee.
				23449	July 31, 1879	2 qr., 1879	2, 632 00	708 01	47 65	W. 3745	May 3, 1879	H. M. Valle	Assignee.
				31928	Nov. 7, 1879	3 qr., 1879	3, 358 26	1, 029 84	1, 383 99	W. 6969	Aug. 1, 1879	S. W. Dorsey, Middleton & Co.	Assignee.
				31927	Nov. 7, 1879	3 qr., 1879			1, 822 96	W. 10592	Nov. 10, 1879	S. W. Dorsey, Donnell, Lawson & Co.	Assignee.
				8068	Feb. 28, 1880	4 qr., 1879	3, 359 26	348 98	162 15	W. 10621	Nov. 14, 1879	P. J. Jaramillo	Subcontractor.
				8083	Feb. 28, 1880	4 qr., 1879			1, 809 26	W. 2672	Mar. 1, 1880	S. W. Dorsey, J. W. Bosler.	Assignee.
				24323	Aug. 4, 1880	1 qr., 1880	3, 358 26	429 12	1, 120 88	W. 2737	Mar. 2, 1880	P. J. Jaramillo	Subcontractor.
				26745	Sept. 8, 1880	2 qr., 1880	3, 358 26	2, 192 93	2, 383 45	W. 8315	Aug. 6, 1880	J. W. Bosler	Assignee.
				30203	Oct. 25, 1880	3 qr., 1880	3, 358 26	2, 040 84	*1, 653 98	W. 10466	Sept. 26, 1880	J. W. Bosler	Assignee.
				30166	Oct. 23, 1880	3 qr., 1880			1, 358 96	W. 11366	Oct. 26, 1880	J. W. Bosler	Assignee.
				6367	Feb. 3, 1881	4 qr., 1880	3, 358 26	1, 366 53	633 47	W. 11980	Oct. 25, 1880	J. L. Sanderson & Co.	Subcontractors
				6366	Feb. 3, 1881	4 qr., 1880			1, 358 26	W. 2817	Feb. 4, 1881	J. W. Bosler	Assignee.
				12560	April 22, 1881	1 qr., 1881	7, 139 41	1, 048 00	958 00	D. 3233	Feb. 3, 1881	J. L. Sanderson & Co.	Subcontractors
				12561	April 22, 1881	1 qr., 1881			1, 493 63	D. 9279	April 24, 1881	J. W. Bosler	Assignee.
				23024	July 26, 1881	2 qr., 1881	7, 635 94		2, 493 59	D. 9272	April 23, 1881	J. L. Sanderson & Co.	Subcontractors
				23023	July 26, 1881	2 qr., 1881			1, 493 63	W. 1398	Aug. 2, 1881	J. W. Bosler	Assignee.
				32575	Nov. 1, 1881	3 qr., 1881	7, 635 94	762 60	3, 169 28	D. 1036	Aug. 6, 1881	J. L. Sanderson & Co.	Subcontractors
				32334	Oct. 29, 1881	3 qr., 1881			3, 904 06	W. 10230	Nov. 17, 1881	J. W. Bosler	Assignee.
									3, 169 27	W. 8861	Nov. 12, 1881	J. L. Sanderson & Co.	Subcontractors
									4, 173 09				

8055 C-476	Feb. 4, 1882 Jan. 30, 1882	4 qr., 1881 4 qr., 1881	5, 142 72 .....	..... 611 68	2, 513 90 2, 017 19	W. 694 W. 1524	Feb. 11, 1882 Jan. 31, 1882	J. W. Boaler..... J. L. Sanderson & Co.	Assignee. Subcontractors
			51, 593 51	14, 611 76	88, 637 78 14, 611 76	Deduction.			
					53, 249 49 1, 655 98	Remission.			
					51, 593 51				

NOTE.—Remission of part of deductions made in 2d qr., 1880.

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The COURT. Does that tabular statement show the amounts, respectively, to Bosler and to the subcontractor?

Mr. BLISS. Yes, sir.

The COURT. Does it show the deductions to be made from the subcontractor or both?

Mr. BLISS. They are made from the subcontractor, sir.

Mr. WILSON. They are made in accordance with the subcontractor's contract.

The COURT. Yes; I understand that.

Mr. BLISS. It shows a total pay by quarters of \$51,593.51, less \$14,611.76 deductions for fines and forfeitures, giving a balance of \$38,637.73, and added to that \$1,655.98.

On February 26, 1879, J. H. Watts, subcontractor, signs a receipt for warrant 822.

On May 16, 1879, J. H. Watts, subcontractor, signs a receipt for warrant 4061.

On April 30, 1879, H. M. Vaile, contractor, by John R. Miner, attorney, signs a receipt for warrant 3366 to 3468.

On May 3, 1879, H. M. Vaile, contractor, by John R. Miner, attorney, signs a receipt for warrant 3745.

On November 12, 1879, John W. Dorsey, contractor, by John L. Lawson & Co., assignees, signs a receipt for warrant No. 10392.

On November 29, 1879, Pedro J. Jaramillo signs a receipt for warrant 10827.

On March 3, 1880, J. W. Bosler, assignee, contractor, signs a receipt for warrant 2672.

On March 16, 1880, Pedro J. Jaramillo, contractor, signs a receipt for warrant 2737.

On September 30, 1880, J. W. Bosler, contractor, signs a receipt for warrant 10485 to 10487.

On February 6, 1882, A. H. Brown, contractor, signs a receipt for warrant 1524.

The record of productiveness I have not here. I will put that in subsequently.

ANTHONY JOSEPH sworn.

Mr. BLISS. Before examining this witness I will state that I find in the files of another route not relating to this a petition which I will hand to the gentlemen. [Submitting a paper to counsel for defense.] It is not on this route, but as I have promised to put in everything that I find I propose to put it in. It is filed in another route, but relates in part to this.

Mr. TOTTEN. Did you find the resolutions of the legislature of New Mexico?

Mr. BLISS. No, sir. I have put in every paper relating to this route that has come to my knowledge. I found this paper last night in another route, but as it contained a reference to this route I produced it. [Reading:]

DENVER, COLORADO, April 28, 1879.

Hon. D. M. KEY,
Postmaster-General:

SIR: The undersigned, the State officers of Colorado, respectfully represent that the mining and agricultural interests of Southwestern Colorado are developing with extraordinary rapidity, and with this increasing immigration the necessity for better mail facilities is seriously felt.

We therefore have the honor to ask that the mail service from Silverton to Parrott City be increased to a daily line, and the route from Parrott City to Ojo Caliente, via Pagosa Springs, be increased to 3 trips a week, and we also ask that the time be made faster than it now is.

Hoping this will receive your early consideration, we have the honor to be,

FREDERICK W. PITKIN,

Governor of Colorado.

M. H. MELDRUM,

Secretary of State.

JOSEPH C. SHATTUCK,

Superintendent Public Inst.

ROBERT G. HOWELL,

Secretary State Board of Land Commis.

HENRY C. THATCHER,

Chief Justice of Colorado.

WILLIAM F. STONE,

Associate Justice Sup. C.

This petition is indorsed:

This service is much needed, and I hope the petition of the petitioners will be granted.

H. M. TELLER.

[The paper last read was marked by the clerk 89 E.]

By Mr. BLISS:

Question. Where do you reside?—Answer. In Ojo Caliente, Taos County, New Mexico.

Q. How long have you resided there?—A. About a year and four months.

Q. What is your business?—A. I am a merchant.

Q. You hold some official position, I think, do you not?—A. I was State senator in the last legislature.

Q. You were at one time postmaster at Ojo Caliente, were you not?—A. I am now.

Q. Who preceded you as postmaster?—A. Jesus Hernandez.

Q. Did you ever have anything to do with carrying the mail on the route from Ojo Caliente to Parrott City?—A. Yes, sir.

Q. How did your connection with that service commence?—A. At the request of ex-Senator S. W. Dorsey I took the service on the route on the 1st of January.

Q. In what year?—A. Eighteen hundred and seventy-nine.

Q. Was that request made in writing? Look at that letter [submitting a letter] and see if you received it?—A. Yes, sir; I received this letter.

Q. Is that the letter to which you refer?—A. That is one of them; yes, sir.

Q. Is that the first letter that you received upon the subject?—A. That is the first.

Q. [Submitting another letter.] I show you a letter dated April 9, 1879, having two pencil inclosures, and ask you if you received it.—A. Yes, sir; I did.

Q. At or about its date?—A. Yes, sir.

Q. [Submitting another letter.] I show you another letter dated April 30, 1879.—A. Yes, sir; I received it.

Q. At or about its date?—A. Yes, sir.

Q. [Submitting another letter.] I show you another dated June 22, 1879.—A. Yes, sir; I received it.

Q. [Submitting another letter.] I show you a letter dated August 22, 1879.—A. I received it.

Q. [Submitting another letter.] I show you a letter dated December 13, 1879.—A. Yes, sir; I received it.

Q. [Submitting another letter.] I show you a letter dated August 7, 1879.—A. I received it.

Q. You received them all, did you?—A. All.

Q. At or about their dates?—A. Yes, sir.

Q. After the receipt of the first letter, did you commence carrying the mail?—A. I did not. I commenced on the 1st of January, 1879.

Q. Subsequent to that time did you make with any one a written contract to carry the mail?—A. No, sir; I did not.

Q. Not at any time?—A. I did probably a month after; nearly a month after.

Q. With whom did you make that contract?—A. I made it with J. W. Dorsey, by his attorney, M. C. Rerdell.

Q. Where did you make it?—A. At Taos, New Mexico.

Q. Did Mr. Rerdell come there?—A. Yes, sir.

Q. Prior to his coming there, and subsequent to the 1st of January, 1879, had you been carrying the mail?—A. No, sir.

Q. Had you carried the mail before he came there?—A. Yes, sir.

Q. From what time?—A. From the 1st of January, 1879.

Q. After you made your contract you continued to carry it, did you?—A. I did.

Mr. WILSON. Your examination is an exceedingly leading one, Mr. Bliss.

Mr. BLISS. I know it. I am trying to get the mind of the witness down to the point.

Mr. WILSON. I observe you are. That is the reason I made the remark.

Q. How long did you continue to carry the mail?—A. I continued to carry it until about the 25th of August, 1879.

Q. Did you receive your pay for carrying it, and if so, from whom?—A. I received payment for the first quarter.

Q. From whom?—A. I think it was from J. W. Dorsey. I do not remember, but I think so.

Mr. BLISS. Is there any objection to the letter I first handed you?

Mr. WILSON. Colonel Ingersoll says he has none.

Mr. BLISS. [Reading:]

WASHINGTON, D. C., December 22, 1878.

ANTHONY JOSEPH, Esq.,

Ferdinand de Taos, New Mexico:

DEAR SIR: John W. Dorsey, a brother of Senator Dorsey, is the contractor on the route from Ojo Caliente to Parrott City, once a week. The route was let to J. H. Watts, of Santa Fé. He telegraphs that he will stop January 1st. Mr. Dorsey is absent at present, and at the request of the Senator I write to request you to put stock on that road and see that it is properly carried until his brother can attend to the matter, and to request you also to let him know at what price you will carry it the balance of the term, three and a half years, once a week, twice a week, three times a week, and six times a week. If your price is reasonable, he will enter into contract with you.

Write to John W. Dorsey, box 714, Washington.

Yours, truly,

JOHN R. MINER.

[The letter last read was marked by the clerk 90 E.]

The COURT. It is read without objection.

Mr. HENKLE. I object to it. I do not know anything about it.

The COURT. You are too late.

Q. Prior to that time, had you met Mr. S. W. Dorsey ?—A. Yes, sir.

Q. Where ?—A. At Taos, New Mexico.

Mr. HENKLE. Did your honor admit that letter ?

The COURT. It was admitted and read without objection.

Mr. HENKLE. I did not know it would affect my client until I heard the name read. I have not seen it.

The COURT. On what ground do you object ?

Mr. HENKLE. I do not know anything about it. Mr. Miner is not present. Moreover it is dated 1878.

The COURT. I have passed upon that point.

Mr. HENKLE. It is not proved by Mr. Miner. I do not know whether it is his or not. He is not present, and I do not know. I will ask the court to exclude it until I ascertain about it.

Mr. BLISS. It is certainly evidence as against the other parties if not as against Mr. Miner.

The COURT. It is in evidence against the other parties so far as it has any effect in that way, but as to Miner he now objects because it has not been proved.

Mr. BLISS. We expect to prove it.

Mr. MERRICK. Mr. Henkle says he will show it to Mr. Miner when he comes in.

The COURT. As to Miner it is excluded for the present, because it has not been proved.

Mr. HENKLE. Then it seems to me, your honor, that it cannot be admitted against anybody else.

The COURT. It could not be admitted if any objection had been made; but nobody objected.

Mr. MCSWEENY. We agree that the letter, with all its terrible contents, shall be admitted against us cheerfully. We will assume the responsibility. Charge it up to us.

Mr. HENKLE. As to Miner it is excluded.

Mr. MERRICK. For the present.

Mr. WILSON. It cannot be evidence against General Brady or Mr. Turner; that is very clear.

The COURT. No. That, of itself, does not seem to refer to them at all.

Mr. WILSON. I do not know anything about it.

Mr. BLISS. I offer this letter:

KANSAS CITY, MISSOURI, *April 9, 1879.*

The COURT. [Interposing.] Is it objected to ?

Mr. INGERSOLL. No, sir; we do not object.

Mr. BLISS. [Continuing to read :]

Hon. A. JOSEPH, *Taos, New Mexico* :—

Mr. WILSON. [Interposing.] Wait a moment. I have not read it. As a matter of course these are letters which, as I understand it, were written by some of these mail contractors or parties having relations with the contractors. They are not a part of the files of the department.

The COURT. I understand that, and that is the reason I say they must be proved before they can go in evidence if there is any objection made. But there is no objection made on the part of Dorsey.

Mr. WILSON. I will object to them so far as General Brady is concerned, simply for the purpose of saving any rights that he may have.

The COURT. They are admitted as to the others.

WILSON. They cannot be evidence as against him or Mr. Turner.

BLISS. [Continuing to read :]

SIR: The department talks some about discontinuing the mail route from Taos to Parrott City, and I write this to ask you to send *every protest within* your power by petition and letter against any such proposition. Do this forthwith. Go to Santa Fé *immediately* and get letters, not petitions, to the Postmaster-General, urging that this route from Ojo Caliente to Parrott City be *made a daily line at schedule*. Obtain these letters from all the bankers, all the merchants, the secretary of state, surveyor-general, U. S. attorney, judges of the court, and all of the military officers. In addition to the letters, get the same persons to sign petitions. Send me at least 6 or 8 petitions. I have written to General Atkinson, General Barnes, Mr. Ritch, and Mr. Wallingford, who you will find in Gen. Atkinson's office. I have also written to General Hatch and Captain Rucker. Get up a petition from Taos, San Juan, Plaza Alcalde, etc. Please go to Santa Fé *immediately* on account of this, as I wish to have the increase made before I leave Washington. Write your Delegate also. Send all papers to me direct that are not sent to the Postmaster-General. I leave for Washington to-day. I have taken this route myself on account of Peck's illness.

Yours, truly,

S. W. DORSEY.

Each letter is written in one handwriting and the signature in another; afterwards in the handwriting of the signature:

Do not apologize for the writing of letter. I had a great deal to do to-day, and a short hand to help, but he makes a sorry mess of it.

Have any two petitions written by the same person.

Paper last read was marked by the clerk 91 E.]

Read the following in lead pencil:

POSTMASTER-GENERAL:

Citizens of Ojo Caliente we most earnestly request that the mail service between Taos and Parrott City be extended to Taos, our county seat, and that it be made daily instead of once a week. We also ask that the time on said route, which is very slow, be made faster. This route supplies exclusively a large population and we feel that we have a right to ask the Government to grant us this favor. If that our petition will be considered at once and favorably, we shall continue

Paper last read was marked by the clerk 92 E.]

Read the following in pencil inclosed:

SEPH: Please have this copied and signed and sent to me at once.

M. KEY,
Postmaster-General, Washington, D. C.:

Citizens, petitioners, citizens of Taos, New Mexico, and vicinity, beg to ask that the service on the route from Ojo Caliente to Parrott City be extended to Taos, and made daily to a daily line, and that the time be reduced so as to make the trip one-third less than at present.

This route supplies all Northwestern New Mexico and Southeastern Colorado, the Rio Grande River country and the beautiful Tierra Amarilla Valley, all of which is rapidly growing up with farmers, cattle and sheep raisers and miners. We believe more business will be accommodated by this than any other route in this section, and we pray for this increase.

Paper last read was marked by the clerk 93 E.]

Three papers last read were submitted to the jury, and by them read.

BLISS. [Reading:]

WASHINGTON, D. C., April 30, 1879.

WILSON. [Interposing.] I have not read these letters, but as to them I simply want to make the objection for Mr. Turner and Mr. Brady.

COURT. I understand they are not offered in evidence to affect

Mr. WILSON. Very well ; I want the jury to understand that they are not competent evidence against my clients.

Mr. INGERSOLL. So far as S. W. Dorsey is concerned we have no objection.

Mr. BLISS. I understand that it is admitted that the letter was signed by S. W. Dorsey.

Mr. INGERSOLL. And written by him.

Mr. BLISS. And the question is what effect it may have, and that is to be argued.

The COURT. It is competent evidence.

Mr. BLISS. [Continuing to read :]

ANTHONY JOSEPHS,
Taos, New Mexico :

DEAR SIR. The service from Ojo Caliente to Parrott City has been made three times a week with a schedule of 50 hours, to begin May 12, 1879. Do not fail to start the service promptly upon time, and be sure that the postmasters at the two terminal offices report your arrivals and departures promptly to the department, the 30th of June. If the mail is carried *well now*, I think it will be made daily July 1st, 1879. I am personally responsible to you for all dues under your contract. Address all letters either to me or to M. C. Rerdell, box 706, here.

Truly yours,

S. W. DORSEY.

[The paper last read was marked by the clerk 94 E.]

Mr. HENKLE. I understand, your honor, that these letters are only admitted in evidence for the present as against Mr. Dorsey.

The COURT. Yes.

Mr. MERRICK. The letter admitted to be in Dorsey's handwriting, I suppose, is admitted in the case for whatever it is worth.

The COURT. They are not admitted now as against Brady or Turner.

Mr. HENKLE. Nor as against Vaile or Miner.

The COURT. No ; I do not see that they could be.

Mr. HENKLE. We want that understood.

The COURT. They are to connect, as I understand, the two Dorseys and Rerdell. They are certainly affected by these letters.

Mr. MERRICK. And Miner.

Mr. HENKLE. No ; there is no connection with Miner, except by the letter that is excluded.

Mr. MERRICK. That letter is out for the present, because the handwriting is not proved.

Mr. HENKLE. Wait until you get that in.

Mr. MCSWEENY. The court will recollect that about April 6, 1879, Mr. Dorsey took the contract, as stated in the opening, and these letters are subsequent to that.

Mr. MERRICK. Oh, no ; I proved that.

Mr. HENKLE. You proved that yourself.

Mr. INGERSOLL. A letter was introduced signed by Mr. Dorsey in which he stated that the old firm was dissolved and that they were with him.

Mr. MERRICK. I call your honor's attention to one of these letters in connection with this colloquy which says after the period it is represented that he took this contract, that he takes charge of this route because of Mr. Peck's illness.

Mr. HENKLE. Yes ; but he said in one letter that the old firm was dissolved.

The COURT. You have nothing to say about this, Mr. Miner.

Mr. HENKLE. All right, your honor, I am glad of that.

Mr. BLISS. [Reading :]

WASHINGTON, D. C., June 22nd, 1879.

ANTHONY JOSEPHS, Esq.,
Taos, New Mexico.

DEAR SIR: Your two letters to Mr. Rerdell have just come to my attention, and I make haste to answer them.

In regard to the schedule time of 50 hours from Ojo Caliente to Animas City being so fast, I have to say that you are evidently laboring under a singular misapprehension. Fifty hours' time is about three and a half miles an hour, which is slow walking time for a horse or man; a good horse will walk four miles an hour for eight hours every day in the year.

The time is slow compared with the time on almost every route in Colorado. The time on the route from Parrott City to Silverton, over a worse country than your route, is six (6) miles an hour. The average speed on nearly all mountain routes in Colorado is over four (4) miles an hour, and many of them as high as seven (7) miles, and that, too, over mountain roads.

Of course, your men must go night and day, and if they do that they can carry their mail on an easy walk and make the time. *The mail must be carried on time and three times a week.* We cannot and must not permit the orders of the department to be disregarded in this respect. You lose your pay and we lose ours by doing so; and to talk of the speed being too great, it is so absurd that we have not the face to go to the department about it.

If you expect to make this time by allowing your carriers to run *only* in the *day-time* you are quite right when you say it can't be made, but it is your business to arrange your stations, put on your stock, and get your carriers so as to keep them going night and day.

Your statement that it would cost \$12,000 to run this service in 50 hours is equally absurd. That would be at the rate of \$26 per mile per annum, while the average cost of horse-back service is less than five dollars (\$5) per mile per annum. I am afraid the trouble is that you are not giving this matter your personal attention, which you will have to do before you will get it in shape.

Now, there is no use of writing to the department about these matters; we are responsible to the Government and you are responsible to us, and this service must be run according to the instructions of the department. Furthermore you are doing yourself and us a great wrong in getting postmasters to write the department asking to have the old time restored. This, I hope, will never be done again. If you want anything, we are the proper persons to write to. You have nothing to do with the department, except through us.

Finally, you can easily make the time required by the department, to wit, fifty hours, *and you must do it without further delay.*

The mail *must* also be carried *three times a week*, or you will be fined until there will be nothing left to pay you or us.

Do no more writing, but go forward energetically and carry this mail according to our contract, and I will see whether we can pay you something over and above the amount you are now getting, which is \$5,160 per annum, according to our calculation. I do not promise to pay you any more than the contract calls for, but if you go forward as you should, I have no doubt I will do something additional. I hope to hear that this service is running on time, and three trips a week.

Yours, truly,

S. W. DORSEY.

[The paper last read was marked by the clerk 95 E.]

Mr. INGERSOLL. We have no objection to these letters.

Mr. WILSON. I make the same objection as to all these on the part of Brady and Turner.

The COURT. These letters are objected to by Miner, and Brady, and Turner.

Mr. HENKLE. And by Vaile, also.

Mr. BLISS. [Reading:]

WASHINGTON, D. C., August 7, 1879.

ANTHONY JOSEPHS, Esq.,
Taos, New Mexico:

The COURT. Wait a moment. They are not admitted as to them; therefore they have no exception to the ruling of the court on that point. I want the reporter to understand that.

Mr. WILSON. The record should show that they are not admitted as to them.

[The paper last read was marked by the clerk 96 E.]
The next is as follows :

WASHINGTON, D. C., August

ANTHONY JOSEPH, Esq.,
Taos, N. M. :

DEAR SIR: Finding that you evidently did not intend to carry mail on route 38145 in accordance with the orders of the department as provided in your contract, you failed to make 3 trips per week from the time that number was ordered to the end of the quarter, and is still only carrying 2 trips instead of 3, we have ordered route to Mr. P. J. Jaramillo, of El Rito, for the balance of the term. As we are compelled to pay twelve hundred dollars more per year than your contract, we hold you responsible for that amount, and for all other damages we may be put to.

I would be pleased to hear from you on receipt of this, letting us know whether it will be necessary to institute proceedings against you or not, which we shall do unless you make satisfactory arrangements.

Very truly,

M. C. BLISS

[The paper last read was marked by the clerk 97 E.]

Mr. MERRICK. Is that signed agent or for himself?

Mr. BLISS. Not agent; for himself.

The next is as follows:

WASHINGTON, D. C., December

ANTHONY JOSEPH, Esq.,
Taos, New Mexico :

DEAR SIR: My attention has been called to a letter from you to 2nd Assistant Master-General, in which you state that nothing has been paid you for performing service on route 38145 for five months preceding September 1st.

I have filed a complete answer to your extraordinary letter, and for you will give you a statement as to how you stand in the matter.

An order was made increasing the service from one to three trips per week during the schedule from 84 to 50 hours, to take effect on the 15th of May. When order you were duly notified by myself, as well as the dep't notifying post office on the route. You pretended not to understand their order, or was too dull to heed it, and I got the dep't to issue another one explaining the first one so there be no mistake besides writing you myself. These orders you failed to ob-

to \$1,029.84, and which under your contract you are bound to us for, as it leaves us to lose \$193.25 more than your full pay, as it provided that you shall pay *all* fines and deductions, and loss or damage.

This is the way your account stands, and, as to you getting anything more from us, we expect to recover from you not only \$193.25, but the difference between your contract and that of Mr. Jaramillo, which will amount to nearly \$3,500 by the end of the contract term, and I can assure you now that every effort will be made at the proper time to recover from you.

Very truly,

M. C. RERDELL.

[The paper last read was marked by the clerk 98 E.]

At this point (12 o'clock and 30 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. BLISS. If your honor please, I failed to call attention to one thing which should be brought to notice in connection with the jacket marked 56 E. The date is February 20, 1881. At the bottom is what I omitted to read :

Order number 1891. Date February 26, 1881. Day-book, page 126. Wrote postmaster and contractor, February 26, 1881.

On the back of the order is :

From January 15, 1881, increase service to 7 trips per week and allow contractor, &c.

The claim is that it was a retroactive order.

Mr. WILSON. I want the clerk to issue a subpoena to Mr. Elmer to produce the telegram book covering the month of December, 1880, and January and February, 1881.

The examination of ANTHONY JOSEPH was then resumed as follows:

By Mr. BLISS :

Q. After you received the letter from Mr. Miner——

Mr. HENKLE. [Interposing.] He did not say he received a letter from Mr. Miner.

Q. After you received the letter purporting to be from Mr. Miner, being the first letter I showed you, did you receive a letter from Mr. Dorsey?—A. Yes, sir; I did afterwards.

Mr. WILSON. Which Mr. Dorsey?

Q. Mr. S. W. Dorsey?—A. Yes, sir.

Q. Did you immediately afterwards receive a letter which I have not produced here?—A. I think I did; yes, sir.

Q. Have you made search for that letter?—A. I have.

Q. Could you find it?—A. No, sir; I did not.

Q. Do you remember what the contents of that letter were? Do you remember about when it was dated or received and what its contents were?—A. I do not remember as to the date when received.

Mr. INGERSOLL. I object.

The COURT. Wait until we get the preliminary matters settled.

Q. Do you remember about the time?—A. It was some time previous to the 1st of January, 1879.

Q. Now, I will ask you whether you remember its contents, without stating what was in the letter?

The COURT. He says, "Some time previous."

Q. What name was signed to the letter?—A. S. W. Dorsey.

Q. Was it in the same writing as the other letters of Mr. D?

A. That I could not say. I do not remember.

Q. By whom did it purport to be signed?—A. S. W. Dorsey.

Q. Did you subsequently see Mr. Dorsey at any time?—A.

Q. Did you have any conversation with him?—A. I did.

Q. State as fully as you can the contents of that letter.

Mr. INGERSOLL. I object. I think he should state clearly remembers it and remembers it all.

Q. Do you remember the contents of the letter?—A. I do in substance.

Q. I do not suppose you remember every word of it.—A. batim.

Q. But do you remember so that you can state the general of the letter?—A. Yes, sir.

The COURT. But he has not proved that the letter was Dorsey, or that he recognized the signature of Dorsey.

Q. How was it as to the signature?—A. I think that it was as in the other communication.

Q. You recognized it as the same signature, did you?—A.

Q. Did you act upon the letter?—A. I did.

Q. Did you do what the letter requested?—A. I did.

Mr. BLISS. Now, if I can ask the contents of the letter you will see the pertinency of it.

The COURT. The evidence is objected to.

Mr. INGERSOLL. Yes, sir.

The COURT. That he is incompetent to prove the contents of the letter. Is that the ground?

Mr. INGERSOLL. The ground of my objection is first that he laid the foundation by showing that it was written by Dorsey; he ever saw Dorsey write, and in the second place that he does not remember the contents, and that he can state his recollection of the contents only. Therefore I object to it. I suppose the other side have the same right to object.

The COURT. I think that when a paper is lost, if the witness

COURT. Oh, yes; so far as Brady and Turner are concerned.

ENKLE. And Vaile and Miner.

WILSON. As to those it is excluded, I understand.

COURT. Oh, yes; just as the others were.

WILSON. I still further object that there is no evidence going what effort he has made to find the lost paper.

COURT. I understand him to say he has made diligent search after, and cannot find it.

WILSON. The witness should state the facts as to what he did, and it is for the court to say whether it is a diligent search.

COURT. I think the evidence is in the usual way as to that. He made a diligent search.

Now, state as fully as you can, what were the contents of that letter.

A. That J. W. Dorsey was the contractor on mail route 38145, from Caliente to Parrott City, and as Mr. J. H. Watts, who had been the contractor, had advised him that he would suspend service on the 1st of January, 1879, he urged me to commence to put on service, and I would personally be responsible to me for the cost and expenses in performing said service. That is the sum and substance of the contents of that letter.

COURT. Is that not the letter we have got in already?

WILSON. No, sir. We have a letter from Miner.

Did you go to work after that and put on the service?—A. I did. Did you at that time any written contract or agreement as to anything else?—A. No, sir.

How long was it that Mr. Rerdell called upon you after the 1st of January, 1879?—A. I think it was about the end of the month of January.

At that time, I understand you, you entered into a written contract?—A. I did.

Is there on files here a subcontract which purports to have been received at the Post-Office Department, according to the stamp, June 10, 1881, please look at it and see if that is the subcontract. [Submitting to witness.]—A. Yes, sir; it is.

At the time that you made the subcontract, who signed it?—A. Signed J. W. Dorsey, by M. C. Rerdell, his agent, and myself.

What became of the original paper?—A. I think that Mr. Rerdell has it in his possession.

Is there more than one paper executed at that time which Mr. Rerdell and yourself both signed?—A. I think not, sir.

What is this paper?—A. It is a copy of the original subcontract. Made by whom?—A. It was made by myself.

When?—A. At the time that the subcontract was signed.

WILSON. [After examining subcontract.] I object.

COURT. Upon what ground?

WILSON. Upon the ground that it shows on its face it was never received by the department until the 10th of June, 1881.

COURT. I do not understand it to be offered for the purpose of introducing Brady at present into this company; but it is offered as a paper between other parties.

COURT. Yes, sir.

COURT. The paper is admitted.

WILSON. It is not admitted as against Brady and Turner.

COURT. It is admitted as against the parties to it.

WILSON. Then the record will show that it is excluded as to Brady and Turner.

THE COURT. It is admitted as to the parties who made it.

Mr. WILSON. Let us see if it is certified.

Mr. BLISS. It is not certified.

Mr. HENKLE. As I understand it, it being subsequent to the time that General Brady went out of the service, supposing that hereafter they should connect the parties, it would not, under the ruling of the court, be competent evidence.

The COURT. I cannot tell that yet.

Mr. HENKLE. I understand your honor has excluded all matter that related to this conspiracy which transpired subsequent to General Brady's going out of office.

The COURT. But this paper antedates that period. If Brady can be brought in as a conspirator by evidence which is to follow, I am not certain that this paper may not bind him. But for the present the paper is not admitted as to Brady. It is admitted as to the parties to it.

Mr. INGERSOLL. If the court please, this paper says on the top, "Copy of the original." It is dated January 30, 1879. It appears to be a copy of the contract made between John W. Dorsey and Anthony Joseph. It was filed in the department June 10, 1881, by whom I do not know, nor how it got to the department. He had long before that time ceased to be a subcontractor. I do not see how it throws the slightest light upon the case.

The COURT. It is admitted unless there is an objection to it on the ground that it is a copy.

Mr. INGERSOLL. I object that it is not authenticated anyway.

The COURT. As to its being filed in the department I will say that the papers filed in the department have been admitted in evidence heretofore for the reason that they are papers upon which Brady is presumed to have acted.

Mr. INGERSOLL. He could not have acted on this.

The COURT. I have already said it is not admitted as to Brady for that reason.

Mr. INGERSOLL. Now, I object to it because it purports itself to be a copy, and there is nothing to show that it is a correct one.

The COURT. Where is the original?

Mr. BLISS. The evidence shows that there was one original executed and taken away by Mr. Rerdell, and before he took it away this copy was made in his presence. Therefore upon that basis, if no other, I submit the paper would be admissible.

The COURT. Has there been an effort made to procure the original?

Mr. BLISS. No, sir. There has been no notice given, I think.

Mr. MERRICK. The rule of the department requires a copy to bear a certain certificate. Whilst it is a general rule of the department having the force of law, the same power that made the rule can suspend the operation of that rule. And where they accept a contract and put it on file not certified in accordance with their regulation, *quoad* that contract they have suspended that rule.

Mr. BLISS. Back of all that, the law expressly says that the subcontractor may file in the office of the Second Assistant Postmaster-General a copy of the contract. It does not require it to be certified in any manner. The provision for the certification is a general regulation of the department, adding a requirement of certification to the law which could not be done as a general rule, but which could be done in accordance probably with the limitation they put upon it in the regulations

when they say that if the contractor desires to use it as the basis of payment then it must be certified.

Mr. INGERSOLL. This was put on file a year and a half after he was a contractor.

The COURT. The department cannot make a regulation that will change the rules of evidence in the courts. But the papers that have been admitted in evidence heretofore on this trial from the department have been admitted in evidence as against Brady, because they are papers that passed under his notice, from the files, and he is presumed to have had knowledge of them and to have acted upon them; not that the regulations of the department make them evidence, because they could not; but they are simply admitted because they are papers which Brady, as an officer, has acted upon. Now, here is a paper which was filed in the department after Brady had left it. Of course it could not be received as to Brady, because Brady is not presumed to have ever seen it.

Mr. MERRICK. That is so.

The COURT. If it is admissible at all it must be admissible as between other parties; and whether it is admissible as to them depends upon whether this copy of a written instrument can now be admitted without your having shown some effort to procure the original.

Mr. BLISS. We will withdraw the offer, and after adjournment will give notice and offer it again, if the original is not produced.

The COURT. When I said, a little while ago, that the paper was admissible I was not posted as to the facts in the matter. I thought it was the original itself. I was not aware at that time that it was a copy.

Q. At the time you made your contract with Mr. Rerdell, was any statement made to you as to what the schedule time was?—A. Yes, sir.

Q. What was the statement?—A. That the schedule time on that route was seven days from Ojo Caliente to Parrott City; the same as it had previously been carried on by Mr. Watts.

Q. How many trips a week did you first perform?—A. One trip.

Q. Was the service at any time increased to more than one trip?—A. It was.

Q. When?—A. About the 12th of May, 1879.

Q. How many trips did you perform after that?—A. Two trips per week.

Q. How long did you continue to perform two trips?—A. Until the 5th of July, 1879.

Q. Then after that, how many trips a week?—A. Three.

Q. How did it happen that you made a change on the 5th day of July, 1879?—A. By that time I had become satisfied from orders from the department that the increase had been made to three trips instead of two, and were required of me as a subcontractor on that route, previous to that there had been a misconception. I residing at Taos, New Mexico, some distance from Ojo Caliente, had been informed by the postmaster at Ojo Caliente that there had been an increase to two trips per week, commencing May 12, and that from the wording of the order I construed it to mean that it was increased from one trip per week to two trips per week, and consequently I commenced the service accordingly.

Q. Then, on the 5th of July, you became satisfied of what?—A. By orders from the department that it was required to perform three trips per week.

Q. Then what after that?—A. At that time I suspended service.

Q. When you performed two trips per week upon what of time was it?—A. I performed it on a schedule of within six a half to Animas City.

Q. When you performed three trips per week, on what schedule of time was it?—A. Upon the same.

Q. When you performed one trip a week, how many men and horses did you use?—A. I commenced on the 1st of January, with three and six horses.

Mr. INGERSOLL. I make the same objection as to the men and that it is not alleged in regard to this route, and the court overrules the objection, and I take an exception.

The COURT. Yes.

Q. [Resuming.] You commenced with how many?—A. Three and six horses.

Q. When did you increase your number, if at all?—A. In the middle of February, 1879, I increased the number of men to six and the number of horses to nine.

Q. And was the number increased after that?—A. Yes, sir; the service was increased.

Q. I say was the number of men and horses increased after that?

The WITNESS. When performing one trip or two?

Mr. BLISS. At any time; whether performing one or two?

A. Yes, sir.

Q. When was that?—A. On the 12th of May I increased the number of men and horses.

Q. To what number?—A. The number of men to nine and the number of horses to eighteen.

Q. What kind of a country is that through which this route passes?

A. It is mountainous; rough and rugged.

Q. How was that mail carried; upon horseback, or how?—A. Upon horseback most of the time.

Q. Were the streams bridged?—A. Some of them were.

Q. What streams were there upon the route, of any size?—A. There were the Blanca, the Navajo, the San Juan, the Rio de

The WITNESS. When I stated nine men on two trips per week, I included the stock-tenders.

Mr. BLISS. Then let us go back.

Q. How many carriers did you have when you were running two trips per week?—A. Four, I think.

Q. And how many horses?—A. On two trips a week, eighteen.

Q. When you were running three trips per week, how many carriers and how many horses?—A. I had then six carriers and about twenty-seven horses.

Q. And how many stock-tenders did you then have?—A. Four or five.

Q. Did you, at any time, communicate with the Post-Office Department with reference to a fifty-hour schedule?—A. I did.

Q. [Submitting a paper to witness.] I show you a paper marked 45 E. Please look and see if you have seen that before?—A. Yes, sir; I have.

Q. Does it bear your signature?—A. Yes, sir.

Q. Are the statements in it correct, or were they correct at that time?—A. Yes, sir.

Q. [Submitting papers to the witness.] I show you papers marked 47 and 48 E, and ask you if you have seen them before?—A. Yes, sir; I have.

Q. Are the statements in them correct?—A. Yes, sir.

Q. [Submitting another paper to the witness.] I show you the paper marked 49 E. Have you ever seen that before?—A. No, sir.

Q. [Submitting another paper to the witness.] I show you the paper marked 12 E. Have you ever seen that before?—A. Yes, sir.

Q. I see that in this paper marked 48 E you say—

We, the undersigned, deem it both impossible and impracticable under the present bad condition of the roads, mountain passes, &c., to recommend a shorter schedule-running time than six days each way, as heretofore.

A. Yes, sir.

Q. Why was it impracticable?—A. On account of the reasons set forth in that paper.

Q. What do you mean by "the bad condition of the road, mountain passes," &c.?

Mr. INGERSOLL. I object to it. The letter speaks for itself. I object to having it explained.

Mr. TOTTEX. I object to the paper itself, because the Postmaster-General and the Second Assistant Postmaster-General are not put in office for the purpose of expediting routes or increasing service or doing the contrary, for the purpose of obliging a subcontractor, and it does not make any difference whether this witness recommended action in one way or another. It is not binding upon a public officer. I therefore object to the paper on account of the substance of it as inadmissible as against the public officer.

The COURT. I think the paper, under the rule heretofore laid down, is admissible in evidence.

Mr. BLISS. It has been in evidence twenty-four hours already.

The COURT. You can read it.

Mr. BLISS. It was read in evidence twenty-four hours ago.

Mr. INGERSOLL. I object to the witness explaining.

The COURT. I will sustain your objection to the explanation. The paper is in evidence because it is one of the Second Assistant's papers.

Mr. BLISS. It is a paper signed by the postmaster at the termini of the route, and the subcontractor, and it is a paper transmitted in reply

to a request from the Second Assistant Postmaster-General's office to make a statement.

The COURT. Well, it is in evidence.

Q. [Resuming.] What I want to get at, Mr. Joseph, is this: What was the condition of the road and passes and rivers in June, 1879?

Mr. INGERSOLL. I object to it.

The COURT. I sustain the objection unless the counsel on the other side can show me some good reason.

Mr. BLISS. I am proposing to show, sir, that at that time the rivers were so high that it was impossible to make over the route the expedition of fifty hours which Mr. Brady insisted upon requiring in spite of the protests of the terminal postmasters and the contractor that it could not be done.

The COURT. But the notice to Brady was contained in the paper.

Mr. BLISS. Yes, sir; I want to prove what was the fact.

The COURT. You cannot prove the fact, because Brady is not bound by a fact of which he has no knowledge.

Mr. BLISS. No, sir; Mr. Brady is bound by this, sir. If Mr. Brady's attention is called by the postmasters to the statement that it is impossible to make the time, it might be that Mr. Brady may have said, "I have inquired and I found outside that these postmasters are mistaken; that the time could be made." I propose to show that the road and the rivers were in such condition that it could not be made. It is in that connection that I offer it.

The COURT. You prove a fair notice to Brady of the fact. If he can show that the roads were good, and that notice——

Mr. INGERSOLL. [Interposing.] We do not care whether the roads were good, bad, or indifferent.

Mr. BLISS. Oh, I know you do not.

Mr. MCSWEENEY. I wish the court would look at section 592, page 140, of the postal laws. Here is a complaining subcontractor. Now these parties must inform themselves as to the condition of roads, hills, streams, toll-bridges, ferries, or obstructions of any kind by which expense may be incurred.

No claim for additional pay, based on such grounds, can be considered; nor for alleged mistakes or misapprehension as to the degree of service; nor for bridges destroyed, ferries discontinued, or other obstructions increasing distance, occurring during the contract term.

There is something a little curious in permitting a party estopped almost, so to speak, by the law, coming and averring after he has taken a contract with this statute before him, and asking to try a man for the penitentiary on his grumbling about a bridge or a big storm after he took the contract.

The COURT. Here is a subcontractor who is connected with the route, and he tenders notice to the Second Assistant Postmaster-General, giving his description of the road, and the difficulty of making the trip, and stating reasons why no increase should be allowed.

Mr. MCSWEENEY. It makes it subject to all this knowledge originally.

The COURT. But it is for the purpose of bringing home knowledge to the Second Assistant Postmaster-General.

Mr. BLISS. It is not simply the subcontractor, it has both the terminal post-offices on the same paper.

The COURT. It is no matter whence the notice came. If the Postmaster-General with his eyes open, willfully, and for the sake of favoring friends or confederates, expedited the service at great expense to the Government, it makes no difference whence he got his knowledge.

Mr. McSWEENEY. We are looking at the source of the knowledge.

The COURT. Here is a man admitted to have knowledge, and he sends a written notice to the Postmaster-General and it was enough to put him on inquiry. Whether he was right in his facts or not is another thing.

Mr. BLISS. Your honor, the paper is in and I do not see that we need to discuss that point.

Mr. McSWEENEY. The Postmaster-General could not annul the contract on a letter about a flood.

Mr. MERRICK. The difficulty is that the Postmaster-General expedited the route to a time which he was informed it could not be expedited to.

The COURT. I cannot have this subject further discussed. I have admitted this evidence for the purpose of enabling the prosecution to make out their theory of the case. [To the counsel for the defense.] If they fail in making it out, so much on your side. But we cannot have a discussion of the subject now. The time has not come.

Mr. WILSON. I do not want to discuss that now, if your honor please. I simply rise to say that there seems to be a misapprehension of this thing in the mind of the court. I have been sitting here and not objecting to it. But this state of case arises as this evidence shows: that the increase or expedition has been accomplished, and it has been accomplished upon a great many petitions sent to the Post-Office Department. Now, here comes this letter, and the question is, of course, whether General Brady is to reverse everything that has been done upon the application of the people and the Senators, and all that, upon the letter of a complaining subcontractor. There is where the misapprehension is about this thing. I do not care anything about it.

The COURT. As to the weight of the evidence, the competency of the evidence, that is another question entirely.

Mr. WILSON. Oh, I agree to that.

Mr. MERRICK. Brother Wilson is mistaken in one particular. He says this particular increase was granted upon these letters and petitions. They were for expedition, but not to fifty hours. He cannot find one.

Mr. BLISS. This reply is made to Brady, sir. [Holding up a paper.] When he sends a circular asking them for a statement. There is Brady's own signature.

Mr. WILSON. Now, Mr. Bliss—

Mr. BLISS. [Continuing.] His own stamped signature.

Mr. WILSON. Let us play fair, now. You say that is Brady's own signature?

Mr. BLISS. I say that all these go out with Brady's stamped signature.

Mr. WILSON. You said Brady's own signature?

Mr. BLISS. I said his stamped signature.

Mr. WILSON. You said his stamped signature when I was about calling attention to your stating that it was his own signature. Now, what has that paper that he parades here—

The COURT. [Interposing.] You are talking now about the effect of the paper. Let us go on.

Mr. WILSON. The trouble is that instead of putting this evidence in the regular way there is a running comment upon it by the counsel for the prosecution.

The COURT. I did not hear the comment.

Mr. MERRICK. There was no comment made by us.

that this subcontract was not placed on file until the 10th 1881.

The COURT. Very well, Judge Wilson. We will not give fear of this unless you are entitled to it.

Q. [Resuming.] How much were you paid by him?—A. I the sum of \$109.39.

Q. By whom?—A. By ex-Senator S. W. Dorsey.

By the COURT:

Q. How much did you get?—A. One hundred and nine do thirty-nine cents.

Q. For how long?—A. From the 1st of April till the 25t gust.

By Mr. BLISS:

Q. [Resuming.] Eighteen hundred and seventy-nine?—A. "

Q. How was it paid to you, and where?—A. By a check amount at the ranch of ex-Senator Dorsey.

Q. Whereabouts is that ranch?—A. In Colfax County, New

Q. Did you at that time have any conversation with Mr. D A. I did.

Q. What was it?

Mr. INGERSOLL. I object to it.

The COURT. I admit it only as to Dorsey.

A. I told him the physical impossibility of performing the s the required time of fifty hours for the department, and that i possible for me in the condition and state of the roads at tha perform the service. I stated to him that there were some eigh postmasters on the route between Ojo Caliente and Animas (that the mails were large and bulky, and that there was a gr of registered matter going over the line at the time, and oftenti had forty or fifty registered packages which the postmaster on s would have to require a receipt for, and that it took him from to an hour and a half at each office to perform the work; tl were large streams between Ojo Caliente and Animas City

required schedule of fifty hours that my failures would consume the earnings of the service, and as he had the route, or was responsible to me, he could not pay me out of his own pocket unless I performed the service in compliance with the orders from the department.

Q. What do you mean by saying "consume the earnings of the service"?—A. Well, he told me that he was not getting a dollar, or had not received a dollar, from the Government for the service that I had performed from the 1st of April, and that, consequently, he could not pay me out of his own individual pocket, I having failed to perform the service as required in the fifty hours.

Q. Do you remember when that conversation was?—A. That was in the month of August, 1879.

Q. Was anything said then about getting any remissions of fines and forfeitures; and, if so, what?—A. He told me that if I would get the certificates of service from the different postmasters on the route, and forward them to him at Washington, he would go before the department and endeavor to get remissions made; and if any money whatever was paid or remitted that that should go to me for service performed.

Q. Did I understand you to say that he said that he had not received any money from that service?—A. That is what I understood him to say.

Q. In point of fact, was that service performed when you were running once a week in ninety hours?—A. It might have been.

Q. Well, was it?—A. I do not remember.

Q. Was it, as a rule, performed in ninety hours?—A. No, sir; it was not.

Q. Had you any knowledge of a ninety-hour schedule?—A. No, sir; I had not when I commenced the service.

Q. When do you say you gave up the service?—A. About the 25th of August, 1879.

Q. How long did you have the service; from January 1, 1879, until the 25th of August?—A. Yes, sir.

Q. What was the aggregate pay you received?

Mr. WILSON. I object.

The COURT. He limited it before from April to December.

Mr. WILSON. He put it in by the record, and we did not object to it.

Mr. BLISS. No, no; not Joseph's pay.

Mr. WILSON. It was put in his quarterly payments.

Mr. BLISS. No, not Joseph's.

Mr. WILSON. You have already taken his own statement as to what his payment was.

Mr. MERRICK. The payment as to Dorsey.

Mr. BLISS. That was from April to August. I am bridging over from January to April. I have not asked him that.

The COURT. You can ask the question.

By Mr. BLISS:

Q. [Resuming.] How much did you receive independently of this \$109.39?—A. For the first quarter I received the sum of \$383.89, I think.

Q. Did you receive any other money than the \$109.39?—A. No, sir.

Q. Those two payments you did receive?—A. Yes, sir.

Q. Was it possible during the period between April 29, 1879, and the time you gave up the service, to make the trip from Ojo Caliente to Animas City in fifty hours?

Mr. INGERSOLL. Do not answer; I object to it. He has not the right to judge of an impossibility.

The COURT. I sustained a similar objection a little while ago. Since that time I have reflected upon the subject, and I am satisfied that I was in error in rejecting the evidence. I think it ought to be admitted with this view. There was notice given to the Second Assistant Postmaster-General in regard to the difficulty of this route, and the question bears upon the good faith on his part in ordering expedition over a route like that. He is charged here—it is not for me to say now with what truth—with ordering extravagant expeditions, not only for the profit of confederates, but for his own profit, and if the expedition was wantonly ordered at a rate which it was impossible to perform, and at the rate over a road which did not require it, these things would tend to throw light upon his good faith in making the order. It is in that view that I think the question ought to be admitted.

Mr. INGERSOLL. Just let me say one word. I do not think it is an important thing, but it is this: If he received information, he is only bound by the information he did receive. If the man said he had taken his levels, or photographs of that country, or if he had stated that it was absolutely impossible, why it may be, to that extent, or for whatever that is worth, Mr. Brady would be bound. But certainly Mr. Brady cannot by any possibility be bound by what is in the letter.

The COURT. I do not know that. The notice put him on inquiry.

Mr. INGERSOLL. That puts him on inquiry.

The COURT. The notice might not contain all the matter he might learn by inquiry. But if the notice puts him on inquiry in regard to a subject he ought to inquire about, he is chargeable with a knowledge of all he might have found out with due inquiry afterwards.

Mr. INGERSOLL. Well, when we take into consideration that there were nine or ten thousand routes, and further take into consideration that there were a great many people asking expedition, and if we take into consideration the further fact which will appear that this was carried upon that schedule and has been for years——

The COURT. That is another thing altogether.

Mr. INGERSOLL. I understand. But when we take that into consideration it seems enough to say that the letter put him on inquiry. Now, then, to have a man come and say, in addition to that, that it was an impossibility, and hold Brady responsible for what the man says now, instead of what the man said then, it seems to me reverses the order of affairs.

The COURT. I do not think so. If it should be proved here, not by this witness only, but by additional testimony—and I would not undertake to say that the testimony of one witness would not be enough—that the fifty hours' expedition ordered upon that route was an expedition which no contractor could perform, and was wholly unnecessary, and would cost an immense sum to the Government, then, I think that, although there was a great deal of business in the office, yet that the expedition might be judged to have been made with bad faith; because before making an order which would involve such a cost as that to the Government, he ought to have made inquiries, and if the business of his department was too heavy for him to attend to the safest way was to do nothing.

Mr. INGERSOLL. But this letter was sent after he had done this, and if the safest way was to do nothing, then the safest way was to leave it as it was.

The COURT. [Laughingly.] As to that, to be sure. But the expedition having been voluntarily ordered he ought not to have kept it up.

Mr. BLISS. Your honor will bear in mind that the expedition to fifty hours is not shown to have been petitioned for at all.

Mr. INGERSOLL. It was made. I do not claim it was petitioned for at all.

Mr. BLISS. These expeditions were for faster time.

The COURT. I only admit it as tending to show that the order for expedition was kept up after a knowledge that the expedition could not be performed. Proceed now with your question.

Mr. TOTTEN. We want an exception, your honor.

Mr. BLISS. The reporter will please repeat the question.

The question was repeated, as follows:

"Q. Was it possible during the period between April 29, 1879, and the time you gave up the service, to make the trip from Ojo Caliente to Animas City in fifty hours?"

A. It was impossible for me to perform it, as I attempted it and failed various times.

Q. Could it not have been performed if you had run nights?—A. It might.

Q. Was it possible to run nights in the then condition of the road?

—A. It was impossible to run nights.

Q. Why impossible?—A. For the reason that these mountain streams were high most of the time and the carriers would have to leave the main road and go a great distance up into the mountains and intercept or cross the smaller branches in the mountains where they were fordable and then come down and take the main road again. As they had no roads to go by it was impossible to travel over these rough and rugged mountains at night.

Q. You spoke of the main road. What kind of a road was it?—A. The main road itself was a very bad road; over very high mountain passes and was a very bad road at best.

Q. Now, you spoke of high mountain passes. What do you mean by high mountain passes? Our highest mountain is about six thousand feet. What do you mean out there by a high mountain pass?—A. Across a portion of the Continental divide it is upwards of twelve thousand feet high.

Q. [Submitting sketch map to witness.] Now look at this sketch. [Indicating.] Here is the red route. In here to the north, lying between the route and the Denver and Rio Grande branch, running north and south, what is the country there?—A. It is mountainous.

Q. [Indicating.] Is this what you referred to as the Continental ridge coming in here?—A. Yes, sir; it runs almost parallel, north and south.

Q. Has the Denver and Rio Grande Railroad built a road—

Mr. INGERSOLL. [Interposing.] If the court please, we haven't the slightest idea what is being testified to, or what is going on.

Q. [Resuming.] Has the Denver and Rio Grande Railroad built a road from, at, or near the point marked on this map Conejos, to, at, or near a point marked Chama?—A. Yes, sir.

Q. Do you know when that was built?—A. Since 1880, I think.

Q. Do you know the distance from a post-office called Price to Chama?

—A. I do not.

Q. Do you know about the distance?—A. I do not, sir.

Q. Do you know the distance from Chama to Park View?—A. I do not.

Mr. BLISS. That is all.

By Mr. INGERSOLL :

Q. When did you first become acquainted with Mr. Dorsey Taos, New Mexico.

Q. Do you recollect what year ?—A. I think it was in the spring of 1878.

Q. Do you know whether Mr. Dorsey was interested in the Territory ; whether he had any property there ?

The WITNESS. At that time ?

Mr. INGERSOLL. Yes.

A. I don't know whether he was, or whether he was negotiating the purchase of property in the Territory at the time.

Q. Do you know where that property was ?—A. Yes, sir.

Q. What county is it ?—A. Colfax County, New Mexico.

Q. What direction is it from Ojo Caliente ?—A. It is about five miles east.

Q. What county were you in ?—A. Taos County.

Q. Does that adjoin Colfax ?—A. Yes, sir.

Q. When did you take this contract ?—A. I commenced the contract on the 1st of January, 1879.

Q. When was the first increase ?—A. About the 12th of March.

Q. There was a dispute between you and the postmasters, or you and somebody, as to what the order meant ; whether it meant two trips in all, or three trips ?—A. Yes, sir.

Q. And you took the ground that it meant one additional trip ?—A. Yes, sir.

Q. And you carried two trips instead of three ?—A. Yes, sir.

Q. Were you fined on account of the failure to carry the third trip ?—A. I think I was, sir.

Q. How long did you carry it two trips instead of three ?—A. About the 5th day of July, 1879.

Q. Now, where did you carry the mail in July ; from what point ?—A. In July, from Ojo Caliente to Animas City.

Q. Where did you carry the first ?—A. From Ojo Caliente to

Was there any railroad being built from Fort Garland down towards Santa Fé?—A. It was built to Alamosa; yes, sir.

Q. Has that been continued towards Santa Fé?—A. Yes, sir.

Q. Will you tell the jury about how far that road is now from Santa Fé?—A. It is now at Espanola, some twenty-seven or twenty-eight miles from Santa Fé.

Q. As that road progressed, was there or not a mail carrier from the terminus of that road to Santa Fé?—A. I think so.

Q. Do you recollect when that was put on?—A. I do not, sir.

Q. Was it a daily mail?—A. I think it was daily; yes, sir.

Q. You had a conversation, I understood you to say, with Mr. Dorsey, in August, 1879?—A. Yes, sir.

Q. How long before that conversation had you stopped carrying the mail?—A. I had not stopped carrying the mail at the time.

Q. Just think about it a moment. I just want you to try to give the date correctly when you stopped carrying the mail?—A. Well, sir, I think not.

Q. Did you at that time settle; did he pay you any money at that time?—A. He merely signed a check for the back quarter ending in June.

Q. And that was the settlement that you then had?—A. We had no settlement at all.

Q. Well, he made you a payment on that quarter?—A. The check was sent to me by mail at Taos, and it was not signed by any one. It was in blank, and when I went to see Mr. Dorsey, I took the check with me, as I wanted an explanation of it, as I did not know why it was that there was no more money coming to me after three months' service. After a conversation with Mr. Dorsey, I presented the blank check and he told me that by an oversight or mistake the name had been omitted, and then he proceeded to sign it himself, which he did at the time with a lead pencil.

Q. You got the money on the check, did you?—A. Yes, sir.

Q. When did you quit the service?—A. About the 25th of August.

Q. Your fines eat up the pay that was coming to you or nearly so?—

A. That is what ex-Senator Dorsey told me.

Q. Now, at that time did you explain to him the doubt that was in your mind about the order—as to whether it meant one more trip or two more trips?

The WITNESS. The trouble I had had from May 12?

Mr. INGERSOLL. Yes.

A. I probably did.

Q. Did he tell you then when you went back to get the facts or to get the certificates of the postmasters? What were you going to get when you went back?—A. To get the certificates of postmasters as to the service performed.

Q. As to what you had already performed?—A. Yes, sir.

Q. And told you that if you would send them to him he would do the best he could to get the fines remitted?—A. Yes, sir.

Q. And were you to have the fines if they were remitted?—A. That is what he told me.

Q. [Submitting a paper.] Look at that letter and see if it is a copy of the one that you received about the increase of the service?—A. No, sir; I never saw this.

Q. Did you ever see one like it?

The WITNESS. With the amount of money stipulated in it?

Mr. INGERSOLL. With regard to the increase of trips.

Q. How many men and horses do you say you first put on the route The WITNESS: When I commenced the service?

Mr. INGERSOLL. Yes.

A. On the 1st of January I put on three men and six horses.

Q. How far did you have to carry the mail at that time?—A. I carried it from Ojo Caliente to Parrott City.

Q. How far is that?—A. I think it is about two hundred and one miles according to the certificates of distance.

Q. When did you make the next increase of men and horses?—A. The next increase was in the month of February, 1879.

Q. How many men and horses then?—A. I then increased to six men and nine horses.

Q. Then in May you again increased to nine men and eighteen horses—A. Yes, sir.

Q. In July to eleven men and twenty-seven horses, if you count the stock tenders?—A. Yes, sir.

Q. Were those all the men you had on any kind of business with the route?—A. No, sir; because I had a herd of horses, and had men herding them.

Q. Were these horses that you herded for this service?—A. Yes, sir.

Q. How many men did you have herding horses?—A. I think I had two men most of the time.

Q. Do you count those two men?—A. No, sir.

Q. If you count those two men, it would make thirteen men, would it?—A. Yes, sir.

Q. How many horses did you have to herd?—A. I had from thirty to fifty most of the time.

Q. Did you use the same horses all the time, or just such horses as you thought best adapted to the business?—A. I used those that thought best adapted to the business.

Q. That is, you used those that were the freshest and best?—A. The freshest and strongest; yes, sir.

Q. You changed horses from time to time?—A. Yes, sir.

Q. How many trips did you generally allow a horse to go?—A. Well, sometimes I would not work a horse probably more than two weeks at a time, and then I would turn him into the herd.

Q. And then take a fresh horse?—A. Yes, sir.

Q. Did Mr. Dorsey, in the conversation you had with him, tell you that he had any interest himself in the route?—A. Previous to that had received a letter from him in which he informed me that he had.

Q. That he had?—A. I was under the impression that he had.

Q. Did he tell you anything about the money he had received from it?—A. He told me that he had not received a dollar for my service.

Q. For the service you had performed?—A. That I had performed.

By Mr. TOTTEN:

Q. [Submitting a paper.] Is that your signature?—A. Yes, sir; it is.

Q. [Submitting another paper.] Is that your signature also?—A. Yes, sir.

Q. [Submitting another.] And this?—A. Yes, sir.

By Mr. INGERSOLL:

Q. Did he not tell you in that conversation that he had turned these routes over to Mr. Bosler, or had made an arrangement with him to take them?—A. I do not remember if he did.

Q. Do you recollect that he insisted that the mail could be carried in fifty hours?—A. Yes, sir.

By Mr. TOTTEN :

Q. [Submitting another paper.] Is that yours?—A. That is my signature.

Mr. INGERSOLL. Let them be marked.

Mr. BLISS. I want to see them.

Mr. INGERSOLL. When the time comes to offer them, the mark will show that the papers were identified by Mr. Joseph as written by him.

Mr. BLISS. Your honor will see that when that time may come, unless the Government is compelled to keep this witness here until perhaps that distant period we will have no opportunity to cross-examine.

Mr. INGERSOLL. Then I will ask the witness to read the papers now.

Mr. BLISS. Oh, no; they are not to go in now, I submit. They are to let us see them now and cross-examine as to the question of identity, and anything that we desire to pass upon.

Mr. INGERSOLL. I will have them read as part of the cross-examination.

Mr. BLISS. No; that does not follow. I submit that we are entitled at this stage of the case to see the letters.

The COURT. The papers have been submitted to the witness, and he has identified them as his. The signature then is proved. Any further inquiry must be as to the contents of the papers and their admissibility; I understand they are not prepared to offer them in evidence now.

Mr. INGERSOLL. I would just as soon do so and rather; but they object.

Mr. BLISS. My only point is this: It may be there is no objection, and that we shall desire to ask no questions. But inasmuch as this witness will leave after this route is disposed of, and we have no access to the letters and know nothing about them now, if they come upon us—

The COURT. [Interposing.] You have a right to cross-examine him as to his signature.

Mr. BLISS. They decline to let me see them.

Mr. INGERSOLL. Oh, no; I offered them all the time.

Mr. TOTTEN. We are trying to find out what he wants. [To Mr. Bliss.] You can look to your heart's content.

By Mr. TOTTEN :

Q. [Submitting several papers to witness.] Are those yours?—A. Yes, sir; my signatures.

[All the papers identified by the witness were marked by the clerk W. E. W., I, and were submitted to counsel for the Government.]

Mr. BLISS. [After examining them.] We make no objection to their admissibility now.

The COURT. Then, they are papers proved, and you have no objection to their admission. Now, is there any further cross-examination of this witness?

Mr. INGERSOLL. Yes. I want to ask him some further questions.

By Mr. INGERSOLL :

Q. Suppose you had put on that route, instead of twelve or thirteen men and twenty-seven horses, twice the number of men and horses, could you have carried the mail in fifty hours?

The WITNESS. During the time that I performed the service

Mr. INGERSOLL. Yes.

A. No, sir; I could not.

Q. How many miles did you have to go?—A. Well, when I leave the main road to cross these mountain streams away from the road I traveled a considerable distance.

Q. About how many miles on the whole; suppose you had to go day and night, I mean. I do not mean day-times only; but if you had traveled night and day, could you, unless stopped by high water, have made the run in fifty hours?—A. Yes, sir; unless stopped by high water.

Q. Without any trouble?—A. I think so.

Q. Will high water stop you about as soon when you are going slow as when you are going fast?—A. I expect so.

Q. If it is too high to cross it does not make any difference at what rate you come up to the river. If you cannot cross it the river will stop you when you do come up to it, whether fast or slow, will it not?—A. Yes, sir; but having more horses and men I could make faster.

Q. But if you could not get across the river it would not do you any good, would it?—A. I would have to go up in the mountains then.

Q. Then, you would need more men and horses?—A. Yes, sir.

Q. Then, do you say with more men and horses you could have carried the mail in fifty hours, traveling day and night?—A. If it had been possible to travel at night.

Q. Was that the only difficulty?—A. That was the only difficulty.

Q. The impossibility of traveling at night?—A. Yes, sir.

Q. Has it been carried on the schedule of fifty hours since then?—A. It probably has when the streams were bridged over and you could travel on the main road.

Q. Is it not now carried on a schedule of fifty hours, and was it so for two years?

The WITNESS. For two years regularly?

Mr. INGERSOLL. Yes.

A. No, sir.

Q. What do you mean by regularly?—A. That is every day of the year.

Q. Now, of course, they would be stopped by high water. You could not carry it in fifty hours when the water was too high. Could you carry it in one hundred hours when the water was too high?—A. Possibly in one hundred hours.

Q. When the water was so high you could not get across.—A. Going around the mountains.

Q. By going some other way.—A. Certainly; not on the main road.

Q. Now, could you carry it in one hundred hours when the stream was too deep?—A. At times it was so deep that it was impassable.

Q. Then you could not carry it in one hundred hours?—A. No, sir.

Q. And one schedule was about as good as another then?—A. Yes, sir.

Q. Unless it was long enough for a thaw?—A. Yes, sir; during the winter in high snow.

Q. One hundred and seventy-two miles from Ojo Caliente to Santa Fe City would be about four miles an hour; or rather forty-three miles in forty hours; and fifty hours would be less than four miles an hour. Can you go on horseback at that rate, with two horses, to carry the mail, and one for the carrier?—A. But, at the time

carrying mail, I sometimes had as many as four and five horses packed with mail. I had a pack train.

Q. That was quite an important mail, was it not?—A. Yes, sir.

Q. Was it a very important mail?—A. I think it was.

Q. Was it of great use to the people in that country?—A. I think it was because two of the other mail routes north of this route were blockaded with deep snows, and I had to perform the service of the other two routes, and all the mail for that San Juan Valley went over my route, and I had to carry it.

Q. Give an idea of the extent of country that your mail route drained and that came that way?—A. It is the whole of the San Juan country; all that country lying west of the Continental range.

Q. Do you regard it as a very important route?

Mr. MERRICK. May it please your honor, my associate is to go to New York this evening, and will want to have the re-examination of this witness, and I ask not to have the burden put on me.

The COURT. I believe that everybody wants to go to their homes at a distance, or to their friends at a distance, or on excursions this afternoon, as to-morrow is Saturday and the next day is Sunday, and at this time of year in the heat, a little fresh air is very salutary to us all, so we will adjourn over till Monday morning.

At this point (3 o'clock p. m.) the court adjourned until Monday morning next at 10 a. m.

MONDAY, JUNE 26, 1882,

The court met at 10 o'clock and 5 minutes a. m.

Present, counsel for the Government and for the defendants.

The cross-examination of ANTHONY JOSEPH was then resumed, as follows:

By Mr. INGERSOLL:

Question. Do you have what is called the rainy season in New Mexico?—Answer. Yes, sir.

Q. When does that season usually commence?—A. It generally commences in June.

Q. When does it cease?—A. It continues until about the middle of September.

Q. From June to September?—A. Yes, sir.

Q. Does it rain much in any other portions of the year?—A. It is unusual.

Q. How are the rivers from September until June?

The WITNESS. During the rainy season?

Mr. INGERSOLL. No, from September until June; not from June till September.

A. In the spring of the year the rivers are very high from melting snow.

Q. When does that commence?—A. Some springs it commences in March.

Q. What time of the year are the rivers dry there?—A. Those rivers are never dry.

Q. When are they substantially dry?—A. They are lower through the winter season.

Q. How far is it from Park View to ...
rtificate of distances signed by the postmasters ...
irty-five miles.

Q. Is there any river between Tierra Amarilla and Navajoe?—A.
Yes, sir.

Q. What river?—A. The Chama, the Blanco, and the Navajoe.

Q. Are those rivers bridged?—A. Not while I was carrying the mail.

Q. What river is there between Navajoe and Pagosa Springs?—A.
The San Juan River.

Q. Was that bridged in 1878-'79?—A. Yes, sir.

Q. What river is there from Pagosa Springs to Pine River?—A. The
Little Piedra and the Big Piedra.

Q. Were those bridged?—A. No, sir.

Q. What from the Pine River to Animas City?—A. The Pine River,
the Florida, and the Animas.

Q. Were they bridged?—A. The Animas was.

Q. Did you write to the Second Assistant Postmaster-General on
the 5th of May, 1879, that in order to make the mail service efficient
between Animas City and Park View you would have to carry the
mails by way of Pagosa Springs, as most of the rivers were bridged
over that route?—A. I think I did.

Mr. BLISS. If the letter is in existence I take it it should be produced.

Mr. INGERSOLL. I can ask the preliminary question whether he wrote
such a letter.

The COURT. You ought to show him the letter and ask him.

Q. [Submitting letter at the bottom of page 836 of the record.] See
if you wrote that letter. I believe they proved it.—A. Yes, sir.

Q. Did you state the facts in that letter?—A. At that time the
wanted to change the route to the lower road. All these rivers were not
bridged.

Q. Did they change the route to the lower road?—A. It was not
changed.

Q. You did what you could to prevent it?—A. Yes, sir.

Q. Do you recollect when this mail was carried from Fort Garland
Ojo Caliente to Parrott City on this line?—A. I do not know that
it ever was.

Q. You do not recollect it?—A. No, sir.

Q. How much mail did you generally carry in weight from Ojo Ca li-
ente?—A. When the other routes were blocked with deep snow I some-
times carried a very large mail.

Q. How large?—A. Of course, I never weighed it, but I have carried
as much as two thousand pounds, more or less.

Q. How many horses did you have to take to pack it?—A. When I
had so much I would take horse teams.

Q. How many horses did you ever use in packing?—A. I used at
one time, when I had the most, four horses.

Q. Did you pack it on their backs?—A. No, sir.

Q. How did you pack it, then?—A. In two light two-horse wagons.

Q. How long did that last?—A. That was only done a few times;
not to exceed five times.

Q. Every now and then?—A. Every now and then.

Q. Were you obliged to take all the mail that came?—A. That is
what I understood.

Q. Did you, in calculating the number of horses necessary, take into
account the horses that you used on those occasions?—A. I used the
horses that I sometimes packed with the mail.

Q. But did it take more horses then than it would with lighter mail?
—A. Yes, sir.

Q. Did you count those horses here in your testimony the other day when you said it would take so many men and so many horses?—A. I did.

Q. Did you count all the horses that it took?—A. Yes, sir; as far as I remember.

Q. I do not think you understand me. Do you say it would take the same number of horses with fifty pounds of mail that it would with two thousand pounds?—A. No, sir.

Q. How many more horses would it take with two thousand pounds?
—A. It took four horses and two light wagons.

Q. How many would it take when it was only 50 pounds?—A. Only one horse.

Q. Then it would take three more?—A. Yes, sir.

Q. Three more for each station?—A. Yes, sir.

Q. How many stations were there?—A. I had, I think it was, five stations.

Q. Would it, then, take fifteen more horses?—A. Yes, sir.

Q. Then you did not count those fifteen horses the other day?—A. I did, because I kept these horses at the stations all the time to accommodate the service.

Q. How many horses had you, then, to keep at the stations?—A. At the different stations I had from three to four horses.

Q. From three to four at each station?—A. Yes, sir.

Q. And how many stations?—A. I had five between Ojo Caliente and Animas City, and one at each end. That would be seven altogether.

Q. And you had to keep from twenty-one to twenty-eight horses?
—A. To twenty-seven horses; yes, sir.

Q. How many men did you keep at each station?—A. Generally one.

Q. Did one driver go clear through?—A. No, sir.

Q. He drove and took care of the horses until the other came back?

—A. No, sir; I generally had a hostler to attend to that, and let the man lay over and rest.

Q. You had another man to go on?—A. Yes, sir.

Q. How many men did you have to have at each station?—A. Well, with the man that was waiting there would be two, because there was always one waiting. The one that arrived at the station first would always have to wait for the incoming mail.

Q. And then he would go on and leave the other man there?—A. Yes, sir.

Q. Then there would be a man to take care of the horses, and that man also at each station?—A. Yes, sir.

Q. Did you ever go over the route yourself?—A. Yes, sir.

Mr. INGERSOLL. Will the court allow us now to have the letters that we introduced read as part of the cross-examination, or shall we wait?

The COURT. If they are letters relating properly to the cross-examination they ought to be read now. If they are letters which you do not propose to use in the cross-examination, but merely to prove now, you had better reserve them.

Mr. MERRICK. We have no objection.

Mr. BLISS. We waived objection to their coming in now on Friday.

Mr. INGERSOLL. Then shall I read the letters now?

The COURT. Yes, if you please.

• Mr. INGERSOLL. [Reading:]

TAOS, NEW MEXICO, *January 6, 1879.*

JOHN W. DORSEY,
Washington, D. C.:

DEAR SIR: Your favor of the 22nd of last month came to hand this day, and its contents have been duly noted. As regards your request to put stock on route No. 38145 from Ojo Caliente to Parrott City, and carry the U. S. mail once a week upon the same, commencing January 1st, 1879, permit me to inform you that I cannot possibly comply with your request at present, as I have disposed of all my stock and have none on hand. If the service is increased to six times a week on said route I might contract with you to carry it; but even then could not commence service before the 1st of March next, as it requires time to prepare for a proper service on the said route. I will undertake to carry the U. S. mail on said route six times a week, for the sum of fourteen thousand one hundred and sixty dollars, and commence the service on the 1st day of March, 1879. If the terms are acceptable to you, please inform me in due time. Awaiting an early reply,

I remain yours, &c.,

ANTHONY JOSEPH.

[The paper last read was marked by the clerk 99 E, Defense.]

TAOS, NEW MEXICO, *January 15, 1879.*

JOHN W. DORSEY, Esq.,
Washington, D. C.:

DEAR SIR: I hereby beg leave to inform you that in compliance with your request have put stock on route No. 38145, from Ojo Caliente to Parrott City, and commence service on said mail route once a week on the 1st of January, 1879. The distance from Ojo Caliente to Parrott City is 276 miles, and the mails are large and heavy, so that I have to use two horses, one to pack the mail and the other for the mail rider; and as soon as the military post at Pagosa Springs is established it will require a buckboard or coach to carry the mails on said route. I will undertake to carry the U. S. mail on said route, as required by the P. O. Department once a week, for the sum of twenty-three thousand and sixty dollars per year. This is the best I can do, and if the price is acceptable to you, will enter into contract to carry the mail on said route for the balance of the term. I will carry it for three months or one quarter, commencing on the 1st instant, at the above-mentioned rates. Let me hear from you on the subject immediately, and oblige,

Yours truly,

ANTHONY JOSEPH.

[The paper last read was marked by the clerk 100 E, Defense.]

TAOS, NEW MEXICO, *January 20, 1879.*

Hon. STEPHEN W. DORSEY,
U. S. Senate, Washington, D. C.:

DEAR SIR: I hereby beg leave to inform you that in compliance with the letter of advice from Mr. John R. Miner, written at your request, I have put stock on the mail route No. 38145, from Ojo Caliente to Parrott City, of which your brother is the contractor. I commenced service once a week on the said route on the 1st of January, 1879, in accordance with Mr. Miner's instructions. I wish you would endeavor, if your official duties permit you, to have the mail service increased from once a week to 6 times a week on the above-mentioned route. Since the new military post at Pagosa Springs was established the accumulated mail matter is so great that it requires two animals to carry the U. S. mail on the said route. This mail route has about 10 post-offices at present, and may have 20 before the end of the present year, as the population, now numerous, is increasing all the time, and in order to accommodate them with mail facilities the service ought to be increased to at least 3 times a week, if not six. I also beg leave to call your attention to a petition generally signed by the citizens of this place and Ojo Caliente, N. M., praying that a tri-weekly mail route may be established between this town and Ojo Caliente via Cieneguilla, which was forwarded to the Postmaster-General last summer; if you will interest yourself in our behalf and help us to obtain the mail facilities which our growing country requires, you will place us all under many and lasting obligations. I think that the most proper way would be to get the P. O. Department to order Mr. John W. Dorsey, the present mail contractor on the mail route number 38145, to extend the mail service from Ojo Caliente to Taos, N. M., once, twice, or six times a week, as the case may be.

You are the only gentleman in Washington City, or that ever was there, that has done anything for our poor Territory, and to your kind favor is due our present mail facilities in Northern New Mexico, and for which we will ever be grateful to you. The Ojo Caliente medicinal springs are now quite famous, and a great many invalids visit them from all sections of the country, and they also require these mail facilities in order to be in direct communication with their friends and relatives.

Trusting that you will be able to give these matters your personal attention at an early day, I have the honor to remain

Your obedient servant,

ANTHONY JOSEPH,
Probate Judge, Taos Co.

[The paper last read was marked by the clerk 101 E, Defense.]

Q. Will you state whether at the time you wrote that letter you believed all that you said in it?—A. Yes, sir.

Q. And you endeavored to give a correct statement of the then existing situation in the Territory?—A. Yes, sir.

TAOS, NEW MEXICO, *February 10, 1879.*

JOHN W. DORSEY, Esq.,
Washington :

DEAR SIR: I write these few lines to inform you that the mail on route No. 38145, from Ojo Caliente, N. M., to Parrott City, Colo., has been carried regularly up to this time. The weather is and has been very cold, and the snow is nearly three feet deep on the greater portion of the route, making it very hard on the stock and mail carriers of the mail on said route. I have lost already four horses since the 1st of January last, and the Lord only knows how many more will die before the weather moderates. As the northern mail routes to Silverton, Parrott City, and Animas are blockaded with deep snow, all the mail matter that used to go over the said routes is now sent over this route, making the mails on this route very bulky and heavy.

More than 200 pounds of mail matter accumulate at the Ojo Caliente P. O. every week for Parrott City and intermediate points, so that it is necessary to have two horses to carry through the mail matter. The service on this route must be either increased to either three times or six a week in order to meet the wants of the people in that behalf and also to facilitate the due fulfillment of the service by the contractor. If the mail matter continues to increase as it has, and in all probability will, owing to the immense immigration constantly pouring into the San Juan country, it will require buckboards or coaches to carry the mails before the end of another quarter. I hope that you will endeavor, by all possible means, to have the service increased on said route, the same to commence on the 1st of April next. If you succeed in getting the service increased, please inform me by telegraph, to Cimarron, N. M., in care of G. A. Bushnell, before the 8th of next month, as on that day I will leave here to inspect the said route and will not return for two or three weeks after; so that if the service is increased, I would like to know it before my departure, so I can make the necessary arrangements to carry on the service accordingly. I have been informed that the Postmaster-General has recently ordered the said mail route to terminate at Animas City instead of Parrott as heretofore; please inquire and let me know whether it is so or not, as I have not as yet been notified of the change and am still carrying the mail to Parrott City. I will send you circular of distances duly certified to by the postmasters on the said route immediately upon my return home, and will endeavor to have it reach your hands before the expiration of the present quarter.

Awaiting an early reply from you, I remain yours, &c.,

A. JOSEPH.

[The letter last read was marked by the clerk 102 E, Defense.]

Q. I will ask you if you counted in your testimony the four horses that died or that you lost. If it required twenty-seven horses to do the service you would have to buy four more would you not?—A. Yes, sir.

Q. I will ask if all the facts stated in that letter were believed by you to be true at that time?—A. Yes, sir.

TAOS, N. M., *March 5th, 1879.*

JOHN W. DORSEY, Esq.,
Washington, D. C. :

DEAR SIR: I write these few lines in order to inform you that some of the postmasters on the route from Ojo Caliente to Parrott City are complaining because I do not

deliver the third-class mail matter on schedule time. Third-class mail matter, consisting of boots, clothing, &c., &c., has increased so much in the last few days that there is nearly five hundred pounds of it to go over the said route every week; it would require 20 horses and 10 men to carry on this mail service, carrying all the express matter that now comes through the mails. If the mail service is increased to tri-weekly these irregularities can be avoided; but if it continues weekly, as at present, I cannot perform the service for the small sum agreed upon. I calculated to run the mail on one horse; but now, on account of so much express matter coming through the mails, it requires a wagon or coach to perform the service. I start out to-morrow a wagon to haul over the said route about a thousand pounds of express matter that has accumulated at the Ojo Caliente P. O. in the last two weeks past. You must endeavor to have the service increased to three times a week on said route, so as to make it efficient, otherwise I cannot possibly perform the service. The service for this quarter on said route will cost me no less than seven hundred dollars, taking in consideration the horses that I have lost in severe snow storms and in traveling through snow from two to four feet deep. Another great injustice done to me by postmasters on other mail routes running into the San Juan country, is that they send over this route all the mail matter which ought to be carried over the other lines, and as some of the other routes have been blockaded with snow through the winter season, I have had to carry all the mail matter into that country over my route without due compensation for such extra service. I trust that you will proceed to the Post-Office Department and investigate the complaints made by one or two of the postmasters on the said route and at the same time inform the department of the facts herein set forth. Please answer this immediately and let me know what is to be done in the premises. I am going over the route in person. I leave to-morrow and will return here in 12 days.

Awaiting your answer, I remain yours, &c.,

ANTHONY JOSEPH.

[The letter last read was marked by the clerk 103 E, Defense.]

Q. I will ask you if you endeavored to state the facts in that letter?

—A. Yes, sir; I tried to.

TAOS, N. M., March 6th, 1879.

JOHN W. DORSEY, Esq.,

Washington, D. C. :

DEAR SIR: Your favor of the 24th ultimo came duly to hand, and its contents have been noted. The petitions to increase the mail service to tri-weekly from Ojo Caliente to Parrott City have all been forwarded to the P. O. Department. I start west over the said mail route to-day, and will see that the postmasters of the route sign the distance circulars; the said circulars will be there before the end of the present quarter. I have concluded to commence the tri-weekly mail service on the said route on the 1st of April next, whether the P. O. Department orders it or not, as it is the only remedy to make the service efficient and satisfactory to the people living on the route. Please let me know immediately if I can advisedly undertake to increase the service as above proposed and obtain the due compensation for the same. The postmaster at Ojo Caliente, N. M., has made requisition for a sufficient number of mail bags to hold the third-class mail matter on said route, but as yet they have not been furnished by the department. The mail has been carried in gunny-bags over this route several times, for the reason that others were not supplied. The mail-carriers have refused to carry the mail unless the same was in the proper mail-bags and under lock and key. I therefore request of you to interview the proper officer in the P. O. Department, and demand that mail-bags may be furnished of such a kind as can readily be attached to the saddle. About four more mail-bags will be necessary to hold all the mail matter going over the said route. The roads are very bad and heavy, with considerable snow in the mountains, so that wagons cannot travel on the said route at present; consequently I have to pack the mails on horses in order to make the schedule time. It is utterly impossible to carry the 500 pounds of mail matter that accumulate here over the route once a week and make the schedule time. I therefore have determined to commence the service on said route three times a week on the 1st of April next, whether the P. O. Department orders it or not, unless you instruct me to the contrary. Please answer this immediately so that I can make the proper arrangements to run the mail tri-weekly, as proposed, upon your order or advice.

With regards, I remain yours, &c.

ANTHONY JOSEPH.

P. S.—Please have the mail-bags sent to the postmaster at Ojo Caliente, N. M., so all the mail matter accumulates in that office.

The letter last read was marked by the clerk 104 E, Defense.]

OJO CALIENTE, N. M., March 26, 1879.

W. DORSEY, Esq., Washington :

SIR : I herewith inclose to you the certificate from the P. M. at this place for the terending March 31st, 1879. The certificates from Animas and Parrott I forwarded you from Animas City. Mail matter is accumulating here at the rate of one hundred ds per day, and unless the service is increased from once per week to three times week we cannot make the service on this route very efficient. From the above you will readily see the importance of getting an increase of service on this . I have just returned from a trip of inspection over the said route, and have alted the matter with all the postmasters on the same, and they all agree with as much as to the increase of mail service on this route to make it satisfactory to great number of people now supplied by this mail route. There are three large s on the route where the mails will have to be ferried across during three months in pring, and I have, therefore, made such arrangements with parties living upon the s of these rivers so that the mails will not be delayed on account of high water. I made a terrible blunder in taking the contract for the price that I did ; I was misin- ed as to the nature and general character of the country traversed by the said route. The present quarter has cost me about seven hundred dollars, and I am led, from my present experience, that it will cost me at least two thousand dollars ear to perform the service on said route once per week regularly and properly ; you therefore, at once see and understand my situation. Now, if you think it right and r to increase my compensation for the said service, well and good ; otherwise I have and it, as I am entirely at your mercy. I made a blunder in acceping the contract lid, and am compelled to suffer the consequences whatever they may be. I com- ed the service on the 1st of January last, merely for the purpose of complying your request, not intending at the time to continue the service longer than the narter ; but when your agent came, he found me not prepared to enter into a ract and would not give me snfficient time to consider the matter, so that I took ontract at his own figures, relying that he was doing what was just and right in premises. I make this explanation so that you can and may understand my situa- ; and if you will after taking these things in consideration allow me more for the service on this route you will oblige me very much ; otherwise I will have to d it. Please address the answer to this to me at Taos, N. M., and oblige,

Yours, very truly,

ANTHONY JOSEPH.

The letter last read was marked by the clerk 105 E, Defense.]

- Q. Did you circulate any petition yourself?—A. I think I did.
- Q. Do you recollect whether you circulated the petition where they ed to have the mail carried at the rate of four miles an hour?—A. ink not ; I do not remember.
- Q. [Submitting to witness petition marked 15 E.] Look at that peti- ; do you know whether you ever circulated that or sent it for- d?—A. [After examining the paper.] I do not remember that I ever this.
- Q. Did you circulate any?—A. I think I did, sir.
- Q. About how many? Now, I am not speaking of the ones cir- ated to lengthen the schedule, but the ones circulated before that e ; did you circulate any?—A. I do not remember the number.
- Q. You recollect that you did circulate some, but you do not remem- the number?—A. Yes, sir.
- Q. While I think of it, the contract that you made with Dorsey was ied by somebody?—A. Yes, sir.
- Q. Do you recollect who copied it?—A. I copied it.
- Q. Are you satisfied you copied it as it was?—A. That I do not re- mber.
- Q. Have you any doubt about it?—A. That I could not say, but I d to copy it as it was.
- Q. Have you any doubt about it now?—A. I was quite in haste, as Rerdell was in a hurry to get away. If I made any mistakes they e omissions involuntarily made.

VIEW OF TAKING HIS EVIDENCE AS TO THE PASSAGE OF AN ACT OF LEGISLATURE, BUT AS PRELIMINARY TO ANOTHER QUESTION.

Q. [Resuming.] Did any such resolution pass?—A. I think it

Q. Do you not know that you sent a copy of it to the Secretary of the Postmaster-General?—A. If I did I do not remember it

Q. Did you send it to anybody?—A. I may have done so, but I do not remember.

Q. Did you know of anybody sending it?—A. I have been told

Mr. MERRICK. No matter what you have been told.

Q. Do you know of any one who sent it?—A. By information

Q. Do you know?

Mr. MERRICK. If your honor please, we ask that Mr. Joseph himself to his personal knowledge.

The COURT. [To the witness.] Unless you know of your own knowledge you need not state.

Q. [Resuming.] Did you see anybody do it?—A. I do not remember. I may have sent one myself, but I do not remember the circumstances.

Q. Do you recollect of ever seeing any printed ones—any copies?—A. Yes, sir; I think I did; and I think I had some in my possession.

Q. What did you have them for?—A. They generally sent me acts and laws and memorials and resolutions passed in the legislature.

Q. That is all the reason you had, then; did you help to get it in the legislature?—A. No, sir.

Q. You had nothing to do about that?—A. No, sir.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. When Mr. Rerdell took away the copy of the contract signed by you, did he say anything?—A. He did.

Q. What?

Mr. INGERSOLL. I object to what he said. They can use that as the same as the original.

Mr. BLISS. It is not a question of contents at all.

Mr. INGERSOLL. That is all that can be said.

Mr. WILSON. [Interposing.] When was this?

The WITNESS. This was the latter part of the month of January, 1879.

Q. When he took the subcontract what did he say; did he state that he took it for any purpose?—**A.** He told me that they desired to enter into a written contract with me for continuing the service and we then talked about the distance. As I had not been over the route I knew nothing at all as to the distance, and less about the nature of the country that this route traversed, and I told him at the time that I wanted the sum of, I think, twenty-three hundred and forty or sixty dollars per annum for carrying the mail over this route under the schedule that Watts was carrying it, which was seven days to Parrott City, which was the sum of twenty-three hundred and forty or sixty dollars, I do not remember exactly the sum, and he figured on it awhile. I have been told by some of Mexican carriers that the distance was about two hundred and seventy-six miles, and he told me that it was less, he thought; that it was about two hundred and sixty miles; and on his information I based my calculation and I thought it would pay me and I took it at his figures. He told me it was about \$9 per mile that they were accustomed to paying for such service.

Q. Was anything said about filing the subcontract?—**A.** I told him that I wanted a copy of the original, and I think he told me that he filed it here in Washington.

Q. Filed the original, or a copy, or what?—**A.** Of course, I understood it to be the original, and that we could get copies from that.

Q. Was this letter of the 5th of March sent to the person to whom it is addressed, on or about the time of its date?—**A.** Yes, sir.

Q. How long does it take the mail to go from Taos to Washington?—**A.** That is a question that I cannot answer.

Q. Do you know about how long a time it took to receive letters from Washington?—**A.** From ten days to thirty.

Q. Have you any idea how long it took a letter to get there in March, 1879?—**A.** I do not remember.

Q. This letter is dated Taos [submitting a paper to witness]. Do you know whether it was sent from there?—**A.** That I do not remember. Oftentimes I mailed my letters at Ojo Caliente.

Q. Then either it was sent from Taos or Ojo Caliente?—**A.** Yes, sir.

Q. How far are they apart?—**A.** Thirty-five miles.

By the COURT:

Q. What does Ojo Caliente mean?—**A.** Hot springs.

By Mr. BLISS:

Q. [Resuming.] I see that in your letters here of the 5th of March, you stated that it would require twenty horses and ten men to carry simply the express matter then coming through the mails. Was that statement true?—**A.** Yes, sir; it was at the time.

Q. Then, if an oath was made on the 26th of April, that to carry the mail on route 38145, three trips a week, it would take only five men and fifteen animals, was that statement true?

Mr. WILSON. That is his deduction, your honor.

The COURT. Do you object to the question?

Mr. WILSON. Why, of course.

Mr. BLISS. Well, sir, we won't press it. This oath is made on the 26th day of April—

Mr. WILSON. [Interposing.] You need not make any speech.

Mr. BLISS. [Continuing.] Fifty days after he had that notice, and he swore it took so many men and animals to make those trips.

Mr. WILSON. That is only your statement. I would like to have you sworn.

Mr. BLISS. You have been anxious for that a good while.

Mr. WILSON. I am going to have you sworn. [To the court.] He has no right to make such statements before the jury. That is not a proper thing for him to do.

The COURT. The only proper course when an improper question is asked is for counsel to object to it, and if the court does its duty it will sustain the objection, and then it will stop.

Mr. WILSON. If it had been a question I should have objected to it.

The COURT. It was a question.

Mr. WILSON. Oh, no, your honor; he turned around to make a statement of what had been sworn to and what was said in a certain letter. Then he proceeded to state what information he had. If it had been a question I should have objected.

The COURT. It was irregular entirely.

By Mr. BLISS:

Q. [Resuming.] To make three trips a week carrying the mail in April, 1879, over that route, in your opinion as a mail-carrier experienced in carrying the mail upon that route, could it be done with five men and fifteen animals three trips a week?—the mail as it then was?—A. No, sir.

Q. When you circulated these petitions for a shorter schedule, what was the schedule time, so far as you knew?—A. As far as I knew at the time, it was seven days to Parrott City, and proportionately less to Animas City.

Q. You say "proportionately less." How much less to Animas City?—A. I generally made it within six days and a half.

Q. Six days and a half to Animas. That is about one hundred and fifty-six hours?—A. I suppose so. I have not figured on it.

Q. When you say six days and a half, you mean lying over nights, I suppose?—A. Yes, sir.

Q. And running days?—A. Yes, sir.

Q. When did three trips a week commence on that route?—A. There was a misconception as to the order of the service. I commenced on the 12th of May twice a week, and on the 5th of July three trips a week.

Q. When the trips were increased to three, or two trips were added, what was the schedule time brought down to?

The WITNESS. When two trips were added?

Mr. BLISS. Yes; When there came three trips.

A. I was ordered to perform the service in fifty hours.

RECROSS-EXAMINATION.

By Mr. INGERSOLL:

Q. Now, let me ask you—you can make the calculation in your own mind—would it take three times as many men and horses to perform that service in fifty hours, going night and day, three times a week, as it would to perform the service in six or seven days, traveling only in the light; would it take three times as many men and horses in fifty hours three times a week as it would to perform it three times a week having the six days to do it? Now, understand, having plenty of men and horses to do this work, would it take three times as many?

the WITNESS. To perform it three times a week than it would to perform it once ?

Mr. INGERSOLL. No, no. . To do it in fifty hours, instead of taking days and a half, which you did at one time, would it take three times as many men and horses to do it three times a week ?—A. If it had been possible to travel by night, I think I could have performed it in fifty hours.

Q. That is not the question. You could have performed it in the same time if you had had horses enough, had had relays enough, stations enough. I ask you if it would have taken three times as many horses and men to do it in fifty hours as it did to do it in seven days ?—A. I think it could.

Q. That is your honest opinion, is it not ?—A. Yes, sir.

Mr. INGERSOLL. That is all.

By Mr. DICKSON [the foreman] :

Q. You were shown a petition that you identified as one circulated by yourself for signature. In preparing that for signature, was that your own act, or did you do so under instruction ?—A. It was by request.

Q. By whose request ?—A. By request of ex-Senator Dorsey.

Q. Was that the case with the petition prepared by your clerk ?—A. It was prepared at my orders.

By Mr. TOTTEN :

Q. What did you say about the petition prepared by your clerk ?—A. I ordered him to write it out.

Q. Was that of your own motion ?—A. It was acting under the same instruction—a part of the same request.

By Mr. DICKSON [the foreman] :

Q. Let me ask you again, sir. In one of your letters, the last one read, marked 105 E, you speak of having made a terrible blunder in taking a contract at too low a figure, and that you could not carry it for less than two thousand and some dollars. After that letter, was your price increased by the contractor ; did he allow you any difference ?—A. They promised to allow me more.

Q. Did they allow you more ?—A. Actually they did not.

Q. Has your contract been settled up at the present time ?—A. No,

Q. They are still indebted to you ?—A. So I consider them.

Mr. BLISS. Of the subcontract which we offered the other day, we will give them notice to produce the original ; and unless they produce the original I offer this copy. [After a pause.] Getting no response, I read the copy of the original :

Whereas John W. Dorsey has been accepted according to law as contractor for transporting United States mails on route 38145—

Mr. MERRICK. [Interposing.] Mr. Bliss, let me speak to you.

Mr. BLISS. [After consultation with Mr. Merrick.] I withhold that for the present, sir.

PEDRO J. JARAMILLO sworn and examined.

Mr. BLISS. Mr. Jaramillo is a Spaniard, or a Mexican, who speaks Spanish sometimes pretty well, and at other times requires an interpreter.

The COURT. We will try him alone first.

By Mr. BLISS :

Question. Where do you live ?—Answer. I live at El Bito, Rio Arriba County.

Q. How long have you lived there ?—A. All my life.

Q. Have you had anything to do with carrying the mails from Ojo Caliente to Animas City ?—A. Yes, sir.

Q. When did you commence ?—A. I commenced the 4th of September, 1879.

Q. And how long did you continue ?—A. I run that mail for Mr. John W. Dorsey for ten months.

Q. Did you make a contract with Mr. Dorsey ?—A. Yes, sir.

Q. [Submitting a paper to the witness.] Is that one of your subcontracts ?—A. Yes, sir.

Mr. BLISS. This is the paper marked 71 E.

Q. Where was that made ?—A. It was made on the 7th of August, 1879.

Q. Where ?—A. In my house.

Q. With whom did you make it; who was there ?—A. Mr. Lopez and Mr. Martinez.

Q. I mean who on the other side ?—A. Mr. John W. Steel.

Q. How many trips a week did you make ?—A. Three trips a week in the month of September. I did all I could to carry it in the fifty hours' schedule, because I signed my contract for fifty hours, but the snow commenced in December and the mail from two other routes came to our route.

Q. You made it in fifty hours ?—A. Not all the time during the months of October, November, and December.

Q. And you got fined, did you not ?—A. Yes, sir. I got fined over \$400.

Q. And what was your pay in that quarter ?—A. Eleven hundred and twenty dollars and some cents.

Q. After that quarter did you carry it in fifty hours ?—A. No, sir; I agreed to commence on the 15th of August, but Mr. Steel told me he had sent the contract to Mr. Dorsey, and I received back the contract on the 27th of August, and commenced to run the mail on the 4th of September.

Q. Did you carry the mail during the quarter commencing in January, 1880 ?—A. Yes, sir; I carried the mail.

Q. Did you carry it in fifty-two hours ?—A. No, sir.

Q. Why ?—A. Because the load was too much. There were over six hundred pounds sometimes, and I had to load two or three horses and have a wagon, and the snow was so high in January, February, March, and April.

Q. You could not make the time ?—A. I could not make the time, and also there were too many registered letters, and it would take the postmasters between Animas City and Ojo Caliente to make the record and receipt for them over an hour.

Q. How was the snow ?—A. The snow in some places that I went over during the last days of March was that deep. [Illustrating.]

Q. Up to your breast ?—A. Up to my breast.

Q. Did you get fined for failures that quarter ?—A. I have not been paid for that.

Mr. INGERSOLL. I object to that, because they have introduced the record of his fines.

Q. [Continuing.] You have not been paid for that quarter ?—A. Not a cent.

Mr. INGERSOLL. I object to that. They have introduced all these things before, and I object to it unless the court wants it twice.

The COURT. [To Mr. Bliss.] If you want to ascertain this you can go to the record.

Mr. BLISS. I can ask him if he received anything.

Q. [Resuming.] When did you say you stopped?—A. I stopped running the mail for John W. Dorsey on the last day of 1880.

Q. During the quarter which ended the 30th of June, 1880, how much pay did you receive?—A. Not a cent.

Q. How many men and horses did you use on that route?—A. I used sixteen horses on the line, and ten in my stable.

Q. What were the other horses for?—A. When some of the others were broken down or tired.

Q. How many drivers did you have?—A. Six drivers.

Q. How many stations did you have?—A. About nine or ten.

Q. Did you keep any men at the stations?—A. No; I had an agreement with a man who lived at some place to keep the horses.

Q. Did you keep any men at the stations at all?—A. Some of the drivers or carriers used to stop. When one went out the other would keep the horses.

Q. [Submitting a paper to witness.] I hand the witness 76 E, and ask him if that is a copy of a paper executed by him?—A. That is a copy of an agreement I had with Mr. John W. Steel to release my contract.

Q. Where was that executed?—A. On the 8th of June, 1880, in Santa Fé, New Mexico.

Q. On its execution, did you pay any money?—A. I paid \$500.

By the COURT:

Q. Let me understand. You carried the mail for nothing and paid \$500 to be released from carrying it?—A. Yes, sir.

By Mr. BLISS:

Q. Did you ever receive back any of the fines imposed upon you?—

No, sir. I received \$42.91 for the month of September. The department paid me for the month of September \$162.15, and Mr. John W. Dorsey sent me a check for \$42.91 afterwards.

Q. Did you ever receive \$1,655.98 of fines which were remitted on the second quarter of the year 1880?—A. No, sir.

Mr. TOTTEN. If your honor please, I do not see the object of all this testimony. This man made a subcontract with Mr. Dorsey in August, 1879, and it was filed with the Postmaster-General on the 29th of September, 1879. Now, it seems that he is brought here to complain because he has not been paid for the service which he alleges he rendered. Now, it was the duty of the Postmaster-General to pay him any money that was due to him after deducting the fines and deductions, and if he was fined because he did not carry the mail properly, and his contract price was deducted because he did not carry the mail, it was not a matter for him to complain about here. If he has any controversy with Mr. Dorsey let him settle it where he ought to settle it, in a court of chancery. But I do not see the force of proving all this. What it has to do with this matter I do not comprehend. He simply did not carry the mails because the snow was too deep, and he was fined in the regular order of business in the Post-Office Department for failing to perform his engagement. Now, what has it to do with this controversy—with this trial—whether Mr. Dorsey has paid him or not; whether he was fined; whether remissions were made or not? Now, I submit to the

court that we are going clear out of the bounds of this examination, and we are only wasting time for nothing, only embarrassing the minds of the jury by this testimony going over all manner of questions, and I object to it.

Mr. BLISS. It appears, your honor, that for the second quarter of 1880, there were imposed fines and penalties of \$2,040.84. It appears by a document already in evidence, that on the 6th of September, 1880, the department remitted \$1,655.98, which has gone into the pocket of Mr. Dorsey or his assignee, and that this man has not received it.

Mr. TOTTEN. I submit, your honor, that that has nothing to do with this question.

The COURT. In what respect does that throw light upon the matter in issue here, upon this conspiracy to defraud the United States.

Mr. TOTTEN. It is not a conspiracy to defraud the witness with which we are charged here.

Mr. BLISS. I simply wish to put it in as part of the evidence in the case, inasmuch as the evidence shows that there was so much remitted, and as it might be inferred that under the subcontract he received that money, and as he had stated that he had not received any money, I simply wanted to prevent their saying that this witness must be mistaken, because the records of the Post-Office Department show that he had received that amount of remission.

The COURT. I do not understand that the records show that.

Mr. BLISS. The records show the remission of the \$1,655.

The COURT. They do not show that he received it.

Mr. BLISS. No; I wish to foreclose any question that he did receive it by showing that he did not, and which is one incident, your honor, bearing upon the relation of these parties to the post officials that with this subcontract there on file a remission should be made, and Mr. Dorsey or his agent receive it, and the subcontractor should not receive it.

Mr. TOTTEN. Your honor sees plainly that if this man has any rights in regard to this matter as to the claim against Mr. Dorsey—I have not read the subcontract; I do not know what the terms of it are, but it was a private bargain between two private citizens, and if the remission naturally by virtue of the contract ought to go to this man, he is entitled to it, and he can bring his action in the courts and recover the amount. But what has it to do with this case?

The COURT. I do not see any ground upon which it can be admitted unless it is this: That the prosecution have endeavored to show here that there was a combination of men who were contractors. They were in Washington and the contract had to be performed in remote Territories and States, and they were urging expedition. The expedition put money in their pockets, and at the same time all the services were performed by subcontractors who were bound to pay all the fines. Then the fines after having been imposed were remitted.

Mr. INGERSOLL. [Interposing.] And divided.

The COURT. [Continuing.] And the only ground upon which I can see that this evidence would have any bearing upon the issue would be for the purpose of showing that these contractors of the Government themselves saw that the expedition was a sham; that the fines were imposed and then remitted. The service was not in fact performed, and was not expected to be performed. I shall allow the evidence to go in.

Mr. TOTTEN. The Sixth Auditor has the disposition of these fines

d remissions. It is his business to remit. It is his business to pay a remission to the proper person.

The COURT. I think, in the view I have stated, that it throws some light upon the effort to defraud the United States, if it be true that these contractors were in combination with the officers of the department, and that expedition was ordered which was a sham, and fines imposed and then remitted. Those facts may tend to show——

Mr. INGERSOLL. [Interposing.] They may tend to show a conspiracy, to rob subcontractors.

The COURT. [Continuing.] To show that the expedition was a sham to the benefit of the ring.

Mr. HENKLE. Your honor, I suppose the evidence is confined to the parties.

The COURT. Oh, yes; it is to apply to nobody outside of the ring.

Mr. HENKLE. Who does your honor mean by the ring?

The COURT. It is to apply to these parties who are charged. I do not say that there was such a thing as that.

Mr. HENKLE. I know; but your honor certainly will not admit that testimony as against Vaile and Miner.

The COURT. No, no; they were out of the other testimony and they are out of this.

Mr. BLISS. I ought to call your honor's attention to the fact which I saw and which I took for granted your honor knew, that this remission was made by Mr. Brady's order.

The COURT. That strengthens the position.

Mr. MERRICK. I stated to your honor that fact.

Mr. WILSON. When they propose to show that I hope they will bring with them the papers upon which it was done.

Mr. BLISS. We have them.

Mr. WILSON. I am very glad to have them for once.

Mr. MERRICK. We have never failed to have them yet.

The COURT. These remarks had better cease.

Mr. MERRICK. Address your remark to Mr. Wilson, your honor.

The COURT. The weather is so warm that we had better keep cool.

Mr. TOTTEN. I desire an exception noted to the admission of that testimony.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. You live at El Rito?—A. Yes, sir.

Q. You have lived there all your life?—A. Yes, sir.

Q. How long have you been in the business of carrying the mails?—A. I carried the mails for John W. Dorsey from the 4th of September, 1879, to the 3d of June, 1880, and for Mr. J. L. Sanderson & Company from July 4th, 1880, until November 20th, 1880.

Q. Now, did you ever carry the mail at all prior to the time you made this contract with Mr. Dorsey?—A. I carried the mail in the months of October, November, and part of December——

Q. [Interposing.] Notice my question, and I think you and I will understand each other exactly. What I first want to know is whether you ever had any experience as a mail-carrier until you commenced carrying for Mr. Dorsey?—A. That was the first time.

Q. So that on the 7th day of August, 1879, you made a contract with Mr. John W. Dorsey to carry this mail from Ojo Caliente to Animas City three times a week. That was your first experience in this business?—A. That was my first experience in the business.

sir; at three trips a week.

Q. You did carry it on a schedule of fifty hours, three during the months of September—A. [Interrupting.] Not through in fifty hours.

Q. You did not get through in fifty hours in the month of September?—A. No, sir.

Q. You had not got your stations and stock established in consequence of that you failed to get through in fifty hours?—A. Yes, sir.

Q. And in September the department made deduction of pay on account of your failure to make the schedule time?—A. Yes, sir.

Q. Now, in October, having gotten all your stations and stock on the line, did you carry it in fifty hours?—A. Yes, sir. I carried the mail on a fifty-hours' schedule all the time.

Q. How often did you fail?—A. I failed in the month of September. The whole of my first quarter my deductions were only for the month of September. It shows that I generally performed the service on schedule time.

Q. In the month of October, 1879, about how many times did you fail to get through on schedule time?—A. I cannot tell.

Q. Did you generally get through on schedule time?—A. Yes, sir.

Q. Now, in November how was it?—A. It was the same.

Q. So that during the most of the time of the first quarter you carried the mails through on schedule time?—A. In December there were more failures.

Q. I am talking about the first quarter. In the first quarter, September, October, and November, there were comparatively few failures, although there were some failures; is that correct?—A. Yes, sir.

The WITNESS. I call September the third quarter in the year.

Mr. WILSON. I know; but that was the first quarter of the year.

The WITNESS. I call September the third quarter of the year.

Mr. WILSON. That is all right. We are talking about the first quarter composed of those two months.

Mr. HENKLE. September isn't in that quarter it appears.

Q. Will you tell the jury what other two roads you speak of?—A. Route 38179, from Alamosa to Pagosa Springs.

Q. On account of there being interruptions in the carriage there that I was thrown around on your route?—A. Yes, sir.

Q. What other route?—A. I don't know the number of the route, as to Antelope Springs.

Q. Antelope Springs to what point?—A. I do not know.

THE COURT. What is the use of being so minute and exact in regard to this matter?

MR. WILSON. It is important.

THE COURT. There were two routes that were blockaded by the snow, and the mails from those two routes were placed upon this route in consequence. That is the main fact.

MR. WILSON. Certainly, that is the main fact. I want, however, to get into the matter, because it will be important when we come to the consideration of other branches of this case. I would like to have the jury understand these different points.

Q. There was a mail route from Animas City to Pagosa Springs, was there not?—A. Yes, sir.

Q. That went near Conejos?—A. Yes, sir.

Q. And struck your route at Pagosa Springs; that is to say, it struck over there [indicating on the map]?—A. Yes, sir.

Q. Now, is this a mountainous country through here [indicating on map]?—A. Yes, sir.

Q. Very mountainous?—A. Yes, sir.

Q. In consequence of the blockade this mail came around to Ojo Alente, and that increased the amount of mail on your route?—A. Yes, sir.

Q. And that was one of the causes of your failure in December, and going through the winter?—A. Yes, sir.

Q. Now, what do you know about the route up here from Antelope Springs to Silverton? They could not get the mail through there?—

A. No, sir; that is what I heard; I don't know anything about it.

Q. Is that a mountainous country through there?—A. Yes, sir; very mountainous.

Q. And through there the mail went this way? [Indicating.]—A. Yes, sir; that is what I heard.

Q. This route that you were carrying the mail over was a very important one, was it not?—A. I don't know that it was important; the mail was heavy from Colorado.

Q. There was a great deal of mail through there, was there not?—

A. Yes, sir; a great deal of mail. On one of the trips it was six hundred pounds. I weighed it.

Q. Was there a great number of people going in and settling in that part of the country?—A. Yes, sir; a great many people there.

Q. Miners?—A. Yes, sir.

Q. Were mines being discovered through there?—A. That is what I heard; I do not know.

Q. Did you go over the route yourself?—A. Yes, sir; at that time the merchandise went through the mails; coats, vests, boots, and everything of that kind.

Q. The fact that the mail had become so bulky prevented you from getting through on time?—A. Yes, sir.

Q. And the difficulty in the roads?—A. In the roads.

Q. Before the mail became so bulky, you were able to carry it with-

out very much difficulty, in fifty hours, were you not?—A. Yes, sir; after the mail became so bulky, it took the postmaster a great while to make the changes and examination of the mail.

Q. And the recording of registered packages consumed so much time that it made it difficult to get through in fifty hours?—A. Yes, sir.

Q. That was the cause of the delay?—A. That was one of the causes.

Q. Then there were some failures by reason of snow-storms, I understand?—A. Yes, sir.

Q. And on account of these failures deductions were made from your pay?—A. Yes, sir.

Q. Did you make any application to have those deductions removed?—A. We wrote to Mr. Brady, Second Assistant Postmaster-General, about it, and Mr. Dorsey also, to have that remission made.

Mr. WILSON. The papers, I suppose, will show what was done. If you wrote anything to the department the record will show it.

Q. Do you know whether you did write anything or not?—A. My agent, Mr. Miller, wrote the letters.

Q. You made an agreement with Mr. Dorsey, did you not?—A. With Mr. Steele.

Q. As the agent of Mr. Dorsey?—A. Yes, sir.

Q. [Submitting to witness paper marked 76 E.] Is that the agreement?—A. Yes, sir; that is it.

Q. That was the settlement between Mr. Dorsey and yourself in regard to this matter?—A. That was the settlement.

Q. In making this settlement with Mr. Dorsey you relinquished to him these fines and remissions, did you not?

Mr. BLISS. The settlement is in writing.

The COURT. Yes, the question relates to the contents of the paper.

Mr. INGERSOLL. Then just let him read this paper.

Mr. BLISS. The paper is in evidence.

Mr. WILSON. I think myself it speaks for itself.

Q. Then you ceased to have any further relations to the carrying of this mail after you made this agreement, did you? You stepped out of the business?—A. When I made the agreement, I run the mails until the last day of June, 1880.

Q. And then you stepped out?—A. Yes, sir.

Q. Since that time you have been carrying the mail on this route, have you?—A. Well, I ran that mail for Mr. Sanderson from the first of July.

Q. Then, on the 1st of July, 1880, you commenced carrying this mail for Mr. Sanderson?—A. For Mr. Sanderson.

Q. How long did you carry it for him?—A. Until the 20th of November, 1880.

Q. On what schedule did you carry it?—A. Three trips a week.

Q. How many hours?—A. There is no statement of that. When I make that agreement I do not make any agreement so many hours; only three trips a week.

Q. No schedule of time at all?—A. No schedule of time.

Q. What time did you carry it on?—A. I make three trips a week regularly.

Q. Without reference to time?—A. Without reference to time.

Q. Have you been fined?—A. My contract is for so much a month.

Q. Mr. Sanderson pays you so much a month?—A. Yes, sir.

Q. Does he furnish the stock, or do you?—A. I furnish the stock.

Q. And you have no schedule?—A. No schedule of time. That is

the reason why I pay that \$500 to be quit on the contract. I will not be able to make again the contract for the schedule.

The COURT. He means that he was not willing, after he was out of the other contract and had paid his \$500, to make the same kind of a contract over again.

Mr. INGERSOLL. He got out of one bad thing, and so was not going to have a schedule any more.

The COURT. He paid \$500 to get the hours out.

Q. When you were carrying the mails for Mr. Sanderson what time did you leave Ojo Caliente?—A. Mondays, Wednesdays, and Fridays.

Q. What time in the day?—A. Seven o'clock in the morning, I think.

Q. What time did you leave Animas City?—A. Well, I don't know.

Q. Did you go through?—A. Three trips a week regularly.

Q. Did you go through over the route yourself?—A. No, sir; I have men to run it.

Q. You do not know what time the mail reached Animas City?—A. Well, it reached there three times a week.

Q. The time that the contract required?—A. Yes, sir; three times going out of Animas City and arriving at Ojo Caliente in the week regularly; and three times from Ojo Caliente going out and arriving regularly at Animas City.

Q. You do not know how many hours it took to go through?—A. No, I do not.

Q. Do you know what time they left Animas City going towards Ojo Caliente?—A. I know they left Animas City Mondays, Wednesdays, and Fridays.

Q. What time in the morning?—A. Seven o'clock in the morning.

Q. And what time did they get to Ojo Caliente?—A. I do not know.

Q. Were you there?—A. No.

Q. Where were you?—A. I was in El Rito.

Q. So you do not know anything about it yourself, do you?—A. A little more or less. It took two or three days to go from Animas City to Ojo Caliente.

Q. Was it two or three?—A. Just the middle of that; two and one-half days. From two to three days. I run that mail from the middle road forty miles shorter than the upper road; at least forty miles shorter.

Q. Did you get through in two days?—A. Yes; I got through there.

Q. In two days?—A. A little over two days.

Q. How much over two days?—A. That is more than I can say.

Q. You do not know very much about it, do you?—A. Well, the certificates of the postmasters show that. They are filed here in the office.

Q. Now, if you were not running through on the time required by the schedule, you would be very likely to hear from it, would you not, by having postmasters complain of you? Did Mr. Sanderson ever complain to you that you were not going through on time?—A. He paid me once.

Q. He paid you promptly?—A. Promptly for three months; after that he did not pay.

Q. Who superintended that business?—A. Mr. Forshay.

Q. Who was he working for?—A. For Mr. Gil. Sanderson.

Q. Did you pay any attention to carrying this mail yourself?—A. Of course I did.

Q. While you were carrying for Sanderson?—A. Yes, sir.

Q. You lived in El Rito; is that on the line of this route?—A. Yes, sir.

Q. Did the mail come by El Rito on time?—A. Yes, sir.

Q. Always?—A. Very nearly always; sometimes they were behind some hours.

Q. Generally on time?—A. Yes, sir.

Q. Then, so far as you had an opportunity to observe it during the time that you were carrying for Sanderson it was carried on time?—A. Well, not in fifty hours.

Q. How much more than fifty hours?—A. At least sixty-five or seventy hours.

Q. How do you know that when you do not know the time they started?—A. I live in El Rito, and the mail passed through there, and I could see that it was not so much behind. We had to make three trips a week.

Q. How long did you say you carried the mail for Sanderson?—A. From the 1st of July, 1880, to November 20, 1880.

Q. Did Sanderson pay you for the whole time?—A. No, sir.

Q. Why?—A. Because he said so many deductions.

Q. You did not carry the mail on time and the department deducted from him and would not pay him because you failed?—A. I did not fail in the agreement I made with him.

Q. This is a quarrel between you and Sanderson, is it not?—A. Yes, sir.

Q. In other words, you claim that you simply agreed to carry it three times a week without reference to time?—A. Yes, sir.

Q. Mr. Sanderson claims you were to carry the mail according to the schedule time. That is his claim. He says you were to carry it on schedule time, does he not?—A. I don't know.

Q. That is his claim, is it not?—A. Yes; he claims that.

Q. And you claim that you were simply to carry it three times a week, without regard to time?—A. Yes, sir.

Q. And this produced a disagreement between you, and Sanderson would not pay you because you made so many failures to get the mail through on time. Is that not the fact about it?—A. That is what he says.

Q. You agreed to carry this mail for Mr. Dorsey. Did you subcontract your contract?—A. I was subcontractor under Mr. Dorsey.

Q. Did you hire somebody else to carry it for you?—A. No.

Q. You did not?—A. I had a partner there for one part of the route.

Q. You made an agreement with him that he should carry it for so much, did you not?—A. He made the agreement at the same consideration as my contract; just at the same rate and consideration.

Q. You got into trouble with him, did you not?—A. Yes, sir.

Q. And you did not pay him?—A. I paid him.

Q. But you had trouble with him?—A. Yes, sir; he put me into court; he sued me.

Q. Sued you for his money?—A. Yes, sir.

Q. Is the suit still pending?—A. I paid him.

Q. Is the suit still pending?—A. No; we made an agreement.

Q. You settled that suit?—A. Yes, sir.

Q. So you had trouble all around in this case?—A. All around.

Q. In this suit did you set up these deductions as a defense?

Mr. BLISS. I am not going to object to going into that, but—

he COURT. [Interposing.] It is not worth while I think to go into

Mr. WILSON. If your honor please, I want to demonstrate that this is only a controversy between this contractor and the subcontractor and subs under him and all of them.

he COURT. You have shown enough on that point.

Mr. INGERSOLL. Here are all the papers on the subject, his suit and everything about it.

he COURT. I do not want to go into an examination of that controversy.

Q. Did you not make a contract with the man to whom you sublet work that he should stand all fines and deductions?—A. The same contract I made for myself.

Q. You undertook to stand fines and deductions when you made your contract with Dorsey, and then when you made your contract with the other man you made him agree to stand the fines and deductions.—A. At the same, sir.

Mr. INGERSOLL. I hope the court will remember that when they were on this route a fine and deduction was made on the expedited price not on the regular price. If he got through within one hundred days he got his pay for that, but the deduction was on the expedited time. Here are the papers that show it.

he COURT. Of course it would not be anything else but that. If he performed the service they could not take that into account. They might deduct on the expedition but they could not, of course, make any deduction on the service because the service was performed.

Mr. INGERSOLL. Unless he was behind on the schedule time of the final service.

he COURT. Yes; but there was no pretense of that.

Mr. INGERSOLL. Now and then there was a case of that kind caused by high water or something of the sort.

he COURT. I have not seen that.

Q. Do you know about a resolution having been passed by the legislature of New Mexico asking for an increase, &c., on this route?

Mr. BLISS. I object. The question describes the contents of a paper.

Mr. WILSON. I am simply speaking of the character of it, to get at the fact whether he knows.

he COURT. You may ask that question; a similar question was put the other side.

Mr. BLISS. No; your honor is mistaken; they asked, we did not. I suppose it is proper to ask him whether he knows of the passage of the resolution with reference to the route.

Mr. WILSON. Very well, with reference to mail service on this route. A. Yes, sir.

Q. Did you ever have a copy of it?—A. I think Mr. Miller sent a copy here to John W. Dorsey.

Q. To whom else?—A. To Mr. Dorsey or to the Congressman.

Q. To S. W. Dorsey in the Senate?—A. I think so, I don't recollect.

Q. He was not in the Senate at that time?—A. That was in 1880, I think.

Q. Did you send it to Mr. Romero, the Delegate?—A. I don't recollect. Mr. Miller sent the resolution to somebody here; I don't know whom.

Q. Who was Mr. Miller?—A. My agent.

Q. Were you a member of the territorial legislature?—A. Yes, sir.

Q. To which body did you belong?—A. The upper house.

Q. The senate?—A. Yes, sir.

Q. Did you get that resolution passed?—A. Yes, sir.

Q. Did you assist in circulating petitions to have this service increased?—A. No, sir.

Q. You had nothing to do with those petitions?—A. No, sir; not the time when I ran that mail I did not make that circulation.

Q. But before the mail was run.—A. I don't recollect. I think that I signed one.

Q. You know of petitions being circulated?—A. I don't recollect.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. You were asked something about mines. Were there mines along this route between Ojo Caliente and Animas City?—A. Well, on the road there is no mines.

Q. How near to it?—A. Well, in the San Juan country.

Q. But that is beyond Animas City, is it not?—A. Yes, sir; and on the upper road. There are mines there everybody says, but I never have seen them.

Q. You have been over the road?—A. Yes, sir.

Q. When you were carrying the mail for Mr. Dorsey, and you failed to make the time, fifty hours, what was the reason of it?—A. Because I did not have any experience to make the agreement in that way.

Q. Do you mean that the time could not be made, or what do you mean?—A. I think that I could not make any money.

Q. Why did you not go over the road in fifty hours?—A. Well, because we couldn't do it; there were so many streams, and the road was not a very good one, and on account of snow. The Government commenced to fix the road in that time.

Q. Has the road been improved since?—A. Yes, sir.

Q. How?—A. By the Government.

Q. What have they done to it?—A. They have got bridges over the rivers and fixed some parts of the road.

Q. Has there been a railroad built?—A. Not in that place.

Q. Is there a railroad that takes part of this mail now?—A. I think so.

Q. It comes over by Chama?—A. By Chama.

Q. That is north of Ojo Caliente?—A. North of Ojo Caliente.

Q. When you ran did you run nights?—A. Yes, sir.

Q. What streams were there that were unbridged?—A. The Chama and the Rio Blanco. The San Juan is bridged.

Q. I want the streams that were not bridged then, when you were running for Dorsey.—A. No bridge on the Navajoe and no bridge on the Rio Blanco. They have commenced a bridge there. No bridge on the Florida. That is all the places where there were no bridges.

Q. What bridges are there now?—A. A bridge at Animas City, Florida, Los Pinos, Little Piedra, San Juan, Rio Blanco and Chama.

Q. Before the streams were bridged, how did you get across them?—A. Well, the rivers were not high when I ran the mail there, in September.

Q. When the rivers were high how did you get across?—A. When the rivers were high I went through the mountains in some cases.

Q. What time of the year are the rivers high there?—A. From March to June.

Q. When you were running for Sanderson you say you had no schedule of time?—A. No schedule of time.

- Q. Did you run on the same road as you ran when you were running Dorsey?—A. In the month of July I ran on the same road.
- Q. After that did you run on the same road?—A. I ran for Sander-one month on the same road.
- Q. And how after that?—A. The two months I ran on the middle d.
- Q. What is the difference between the middle road and the other?—A. At least forty miles.
- Q. Which is the longer?—A. The upper road.
- Q. The middle road is the shorter?—A. Yes, sir.
- Q. How about the bridges on the middle road?—A. There is no dge there, but the rivers are not high in the month of July.
- Q. You had no agreement with Sanderson to go on a particular time? A. I refused to make it.
- Q. When you first commenced running that route for Dorsey, were re any registered packages?—A. Yes, sir.
- Q. As I understand you, it took some time for the postmasters to ister packages?—A. It took more time because they had to make a ord and enter a receipt for the other postmasters, and sign the re-pts.
- Q. Do the postmasters sign for every registered package in the mail? A. Yes, sir.
- Q. At each station?—A. At each station; at each post-office, I an.
- Q. Whether you left the packages there or not?—A. Yes.
- Q. Suppose you had a package for Animas City; does the post-ster at El Rito have to make an entry of it?—A. Yes, sir.
- Q. There is to be an entry in each post-office through which the istered package passes?—A. Yes, sir.
- Q. What was this matter that went through the mail when you had hundred pounds, merchandise or letters?—A. Very near merchan-e and papers.

RECROSS-EXAMINATION.

By Mr. WILSON :

- Q. If the postmaster takes more than seven minutes in this matter of istering letters you are entitled to credit for the excess of time, you not?—A. I don't know. If the man gives me credit it is all bt.
- Q. [Exhibiting railroad map.] This is Ojo Caliente here. [Indicating.] en you commenced carrying this mail for Dorsey were any of these roads built?—A. No, sir.
- Q. Was this road built from here [indicating] across to here? [Indi-ing.]—A. No.
- Q. They were commencing to build this road across here? [Indicat-.]—A. Yes, sir.
- Q. When you commenced carrying the mail from here? [Indicat-.]—A. Yes, sir.
- Q. This road had not been built down here?—A. No, sir.
- Q. And all this railroad building up through these mountains as far Silverton has been done since the time that you took this contract h Dorsey?—A. Yes, sir.
- Q. There was no railroad, then, from Alamosa over here to Antelope? A. No, sir; I think not.
- Q. That has been built since? [Indicating.]—A. I think so.

Mr. BLISS. There is no road there now. The road is across here. [Indicating.]

Q. [Submitting a letter.] Did you write that?—A. Yes, sir.

Q. Do you know Mr. David J. Miller?—A. Yes, sir.

Q. [Submitting another letter.] Is that his letter?—A. Yes, sir.

Q. He is the man you spoke about as being your agent?—A. Yes, sir.

Q. And that is his writing, is it?—A. Yes, sir.

Mr. MERRICK. Let me look at the letter.

Mr. TOTTEN. We are not going to offer it.

Mr. MERRICK. He has proved somebody's signature.

The COURT. He has proved Mr. Miller's signature, the man who was his agent; they have not offered the letter yet. Are you through with the witness?

Mr. WILSON and Mr. BLISS. Yes.

The COURT. Then we will take our recess.

At this point (12 o'clock and 30 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. BLISS. On this route we have put in the tabulated statement showing the warrants, the amounts paid, to whom paid, &c. On the other routes we have heretofore followed that by reading the warrants themselves as going to prove the correctness of this statement; but I apprehend it will be unnecessary to occupy the time of the court by reading those warrants.

The COURT. Oh, there is no use to do that.

Mr. BLISS. If any difficulty arises they can be brought in.

HENRY W. WHEELER recalled.

By Mr. BLISS:

Question. [Referring to papers in the hands of the witness.] What have you there?—Answer. I have the reports accompanied by most of the drafts and warrants on mail routes in Colorado, including No. 33145.

Q. Showing payments?—A. Yes, sir.

Mr. BLISS. It seems necessary to read these, your honor.

Mr. TOTTEN. Why?

Mr. WILSON. Not because we require it, your honor.

The COURT. Cannot they be regarded as in evidence without reading them?

Mr. INGERSOLL. Let them all be read; I wish to have them all read.

Mr. BLISS. Mr. Merrick suggests that if we pass this until to-morrow morning we can make up a tabulated statement which will save all the reading; so I will try and do that. I will now put in a tabulated statement of the productiveness upon this route, and without reading in detail, unless asked, I will simply state the revenues for a year.

Mr. TOTTEN. We object to that paper, your honor, as immaterial, and ask for an exception.

Mr. BLISS. For the post-office at Ojo Caliente the gross revenue for the year ending June 30, 1881, was \$81.68, and the net revenue \$31.33. For the post office at El Rito the gross revenue was for the same year \$88.40, and the net revenue \$11.90.

Mr. INGERSOLL. If the court please, I object to this, and the evidence in this case, I think, shows that the objection is a good one, and should have been sustained long ago. The evidence put in by both

ies shows that mail matter from other routes, routes having been kaded by snow or the carriers having been stopped by high water, tever they were, were sent over this route, six hundred pounds, and e time up to two thousand pounds. I think one letter showed one hundred pounds a day accumulated from other routes at Ojo ente. Now, I submit to your honor whether the productiveness of office at Ojo Caliente would throw the slightest possible light upon mails arriving there from other routes and passing over that line. his tabular statement would show the weight of the mail, the unt that came from other routes and went over this line, then I ld say that it was material—that is, in their view of the case. In view of the case it would not be material in any event. But now no evidence in the world in this case. For instance, take one of ntermediate post-offices on this line, and they say, “We sold here in \$4 worth of stamps.” Does that tend to show the weight of the that went on that line? Does it tend to show the amount that to be carried by the carrier? Does it tend to show the necessity establishing that route? Of course Congress established the route, does it tend to show the necessity of putting service on once, twice, ree times a week? For that reason I object to it. It simply enbers this record. It simply lengthens out this trial. It simply s up the time of the court and the jury and everybody else without mplishing anything. Suppose it turn out, before we get through, there was not a single productive route in all—and if there is a route in the United States, I never heard of it; if there ever was in the United States that paid its expenses, I never heard of it. the question whether or not it was productive, is of no importance, in the light of the evidence that we have heard in this very case fact is clearly demonstrated.

he COURT. Does not the act of Congress contemplate that pro- iveness may be taken into account as well as other circumstances?

r. INGERSOLL. No, sir; not the slightest. That was a law passed e infancy of the republic, and that idea about productiveness was rly and entirely and everlastingly abandoned when we adopted the e cent postage-stamp. In that law it was stated that no route ld ever be abolished for lack of productiveness, and that there ld be one to every county seat in the United States, whether it l a dollar or not. It was at the time when the three cent postage- np was introduced that we forever bade good-bye to the mean, nar-, miserly policy of saying to any man, “We will not carry your er unless we get paid for it.” Consequently I say that productive- s has nothing to do with it. It is not the policy of this Govern- it, and has not been since the adoption of cheap postage. If the rt will look over these laws, it will see that day by day the idea has a abandoned. The old verbiage was kept in the law, but new sec- s of the law absolutely repeal it, so far as its spirit is concerned. that reason I object to anything more about the productiveness of e routes.

J. MERRICK. If your honor please, productiveness on a route is of the elements which the law as it now stands upon the statute s requires the Postmaster-General to take into consideration and ially when he contemplates expediting a route. That productive- as a consideration died out when the three cent postage-stamp was duced is utterly without foundation in any fact or reasoning upon aw. Three-cent postage was established long before the Revised tes, and on page 129 of the book your honor now holds in your

Q. Now, at that time the schedule time was fifty hours?—A. Fifty hours.

Q. That you knew?—A. I knew it was fifty hours.

Q. And you put that right in the contract, too, didn't you?—A. Yes, sir.

Q. You put your contract on file in September; you commenced on the 4th day of September?—A. Yes, sir.

Q. As soon as you got notice that your contract was approved by Mr. Dorsey, you began the work of carrying that mail on the schedule of fifty hours?—A. Yes, sir.

Q. How long did you carry it on the schedule of fifty hours?—A. In the month of September I commenced to run three times a week.

Q. On the 4th of September you began to put your stock on the road and establish your stations?—A. Yes, sir.

Q. And commenced to run it at the same time, did you?—A. Yes, sir; at three trips a week.

Q. You did carry it on a schedule of fifty hours, three trips a week, during the months of September—A. [Interrupting.] No, I did not get through in fifty hours.

Q. You did not get through in fifty hours in the month of September?—A. No, sir.

Q. You had not got your stations and stock established then, and in consequence of that you failed to get through in fifty hours?—A. Yes, sir.

Q. And in September the department made deductions from your pay on account of your failure to make the schedule time?—A. Yes, sir.

Q. Now, in October, having gotten all your stations established and your stock on the line, did you carry it in fifty hours?—A. I did not carry the mail on a fifty-hours' schedule all the time.

Q. How often did you fail?—A. I failed in the month of October. The whole of my first quarter my deductions were only \$400, which shows that I generally performed the service on schedule time.

Q. In the month of October, 1879, about how many times did you fail to get through on schedule time?—A. I cannot tell.

Q. Did you generally get through on schedule time?—A. Yes, sir.

Q. Now, in November how was it?—A. It was the same.

Q. So that during the most of the time of the first quarter you carried the mails through on schedule time?—A. In December there were more failures.

Q. I am talking about the first quarter. In the first quarter, during September, October, and November, there were comparatively few failures, although there were some failures; is that correct?

The WITNESS. I call September the third quarter in the year.

Mr. WILSON. I know; but that was the first quarter you carried it?

The WITNESS. I call September the third quarter of the year.

Mr. WILSON. That is all right. We are talking about the quarter composed of those two months.

Mr. HENKLE. September isn't in that quarter it appears.

Mr. WILSON. Well, it does not matter.

Q. [Resuming.] In December you say your failures were more frequent?—A. Yes, sir.

Q. Now, I wish you would state to the jury why you failed in December more than you did before?—A. From the amount of mail from the other two roads coming to my road.

Q. Will you tell the jury what other two roads you speak of?—A. Route 38179, from Alamosa to Pagosa Springs.

Q. On account of there being interruptions in the carriage there that mail was thrown around on your route?—A. Yes, sir.

Q. What other route?—A. I don't know the number of the route, it was to Antelope Springs.

Q. Antelope Springs to what point?—A. I do not know.

The COURT. What is the use of being so minute and exact in regard to this matter?

Mr. WILSON. It is important.

The COURT. There were two routes that were blockaded by the snow, and the mails from those two routes were placed upon this route in consequence. That is the main fact.

Mr. WILSON. Certainly, that is the main fact. I want, however, to go into the matter, because it will be important when we come to the consideration of other branches of this case. I would like to have the jury understand these different points.

Q. There was a mail route from Animas City to Pagosa Springs, was there not?—A. Yes, sir.

Q. That went near Conejos?—A. Yes, sir.

Q. And struck your route at Pagosa Springs; that is to say, it struck it over there [indicating on the map]?—A. Yes, sir.

Q. Now, is this a mountainous country through here [indicating on map]?—A. Yes, sir.

Q. Very mountainous?—A. Yes, sir.

Q. In consequence of the blockade this mail came around to Ojo Caliente, and that increased the amount of mail on your route?—A. Yes, sir.

Q. And that was one of the causes of your failure in December, and along through the winter?—A. Yes, sir.

Q. Now, what do you know about the route up here from Antelope Springs to Silverton? They could not get the mail through there?—

A. No, sir; that is what I heard; I don't know anything about it.

Q. Is that a mountainous country through there?—A. Yes, sir; very mountainous.

Q. And through there the mail went this way? [Indicating.]—A. Yes, sir; that is what I heard.

Q. This route that you were carrying the mail over was a very important one, was it not?—A. I don't know that it was important; the mail was heavy from Colorado.

Q. There was a great deal of mail through there, was there not?—A. Yes, sir; a great deal of mail. On one of the trips it was six hundred pounds. I weighed it.

Q. Was there a great number of people going in and settling in that part of the country?—A. Yes, sir; a great many people there.

Q. Miners?—A. Yes, sir.

Q. Were mines being discovered through there?—A. That is what I heard; I do not know.

Q. Did you go over the route yourself?—A. Yes, sir; at that time the merchandise went through the mails; coats, vests, boots, and everything of that kind.

Q. The fact that the mail had become so bulky prevented you from going through on time?—A. Yes, sir.

Q. And the difficulty in the roads?—A. In the roads.

Q. Before the mail became so bulky, you were able to carry it with-

out very much difficulty, in fifty hours, were you not?—A. Yes, sir; after the mail became so bulky, it took the postmaster a great while to make the changes and examination of the mail.

Q. And the recording of registered packages consumed so much time that it made it difficult to get through in fifty hours?—A. Yes, sir.

Q. That was the cause of the delay?—A. That was one of the causes.

Q. Then there were some failures by reason of snow-storms, I understand?—A. Yes, sir.

Q. And on account of these failures deductions were made from your pay?—A. Yes, sir.

Q. Did you make any application to have those deductions removed?—A. We wrote to Mr. Brady, Second Assistant Postmaster-General, about it, and Mr. Dorsey also, to have that remission made.

Mr. WILSON. The papers, I suppose, will show what was done. If you wrote anything to the department the record will show it.

Q. Do you know whether you did write anything or not?—A. My agent, Mr. Miller, wrote the letters.

Q. You made an agreement with Mr. Dorsey, did you not?—A. With Mr. Steele.

Q. As the agent of Mr. Dorsey?—A. Yes, sir.

Q. [Submitting to witness paper marked 76 E.] Is that the agreement?—A. Yes, sir; that is it.

Q. That was the settlement between Mr. Dorsey and yourself in regard to this matter?—A. That was the settlement.

Q. In making this settlement with Mr. Dorsey you relinquished to him these fines and remissions, did you not?

Mr. BLISS. The settlement is in writing.

The COURT. Yes, the question relates to the contents of the paper.

Mr. INGERSOLL. Then just let him read this paper.

Mr. BLISS. The paper is in evidence.

Mr. WILSON. I think myself it speaks for itself.

Q. Then you ceased to have any further relations to the carrying of this mail after you made this agreement, did you? You stepped out of the business?—A. When I made the agreement, I run the mails until the last day of June, 1880.

Q. And then you stepped out?—A. Yes, sir.

Q. Since that time you have been carrying the mail on this route, have you?—A. Well, I ran that mail for Mr. Sanderson from the first of July.

Q. Then, on the 1st of July, 1880, you commenced carrying this mail for Mr. Sanderson?—A. For Mr. Sanderson.

Q. How long did you carry it for him?—A. Until the 20th of November, 1880.

Q. On what schedule did you carry it?—A. Three trips a week.

Q. How many hours?—A. There is no statement of that. When I make that agreement I do not make any agreement so many hours; only three trips a week.

Q. No schedule of time at all?—A. No schedule of time.

Q. What time did you carry it on?—A. I make three trips a week regularly.

Q. Without reference to time?—A. Without reference to time.

Q. Have you been fined?—A. My contract is for so much a month.

Q. Mr. Sanderson pays you so much a month?—A. Yes, sir.

Q. Does he furnish the stock, or do you?—A. I furnish the stock.

Q. And you have no schedule?—A. No schedule of time. That is

the reason why I pay that \$500 to be quit on the contract. I will not be able to make again the contract for the schedule.

The COURT. He means that he was not willing, after he was out of the other contract and had paid his \$500, to make the same kind of a contract over again.

Mr. INGERSOLL. He got out of one bad thing, and so was not going to have a schedule any more.

The COURT. He paid \$500 to get the hours out.

Q. When you were carrying the mails for Mr. Sanderson what time did you leave Ojo Caliente?—A. Mondays, Wednesdays, and Fridays.

Q. What time in the day?—A. Seven o'clock in the morning, I think.

Q. What time did you leave Animas City?—A. Well, I don't know.

Q. Did you go through?—A. Three trips a week regularly.

Q. Did you go through over the route yourself?—A. No, sir; I have men to run it.

Q. You do not know what time the mail reached Animas City?—A. Well, it reached there three times a week.

Q. The time that the contract required?—A. Yes, sir; three times going out of Animas City and arriving at Ojo Caliente in the week regularly; and three times from Ojo Caliente going out and arriving regularly at Animas City.

Q. You do not know how many hours it took to go through?—A. No, I do not.

Q. Do you know what time they left Animas City going towards Ojo Caliente?—A. I know they left Animas City Mondays, Wednesdays, and Fridays.

Q. What time in the morning?—A. Seven o'clock in the morning.

Q. And what time did they get to Ojo Caliente?—A. I do not know.

Q. Were you there?—A. No.

Q. Where were you?—A. I was in El Rito.

Q. So you do not know anything about it yourself, do you?—A. A little more or less. It took two or three days to go from Animas City to Ojo Caliente.

Q. Was it two or three?—A. Just the middle of that; two and one-half days. From two to three days. I run that mail from the middle road forty miles shorter than the upper road; at least forty miles shorter.

Q. Did you get through in two days?—A. Yes; I got through there.

Q. In two days?—A. A little over two days.

Q. How much over two days?—A. That is more than I can say.

Q. You do not know very much about it, do you?—A. Well, the certificates of the postmasters show that. They are filed here in the office.

Q. Now, if you were not running through on the time required by the schedule, you would be very likely to hear from it, would you not, by having postmasters complain of you? Did Mr. Sanderson ever complain to you that you were not going through on time?—A. He paid me once.

Q. He paid you promptly?—A. Promptly for three months; after that he did not pay.

Q. Who superintended that business?—A. Mr. Forshay.

Q. Who was he working for?—A. For Mr. Gil. Sanderson.

Q. Did you pay any attention to carrying this mail yourself?—A. Of course I did.

Q. While you were carrying for Sanderson?—A. Yes, sir.

Q. You lived in El Rito; is that on the line of this route?—A. Yes, sir.

Q. Did the mail come by El Rito on time?—A. Yes, sir.

Q. Always?—A. Very nearly always; sometimes they were behind some hours.

Q. Generally on time?—A. Yes, sir.

Q. Then, so far as you had an opportunity to observe it during the time that you were carrying for Sanderson it was carried on time?—A. Well, not in fifty hours.

Q. How much more than fifty hours?—A. At least sixty-five or seventy hours.

Q. How do you know that when you do not know the time they started?—A. I live in El Rito, and the mail passed through there, and I could see that it was not so much behind. We had to make three trips a week.

Q. How long did you say you carried the mail for Sanderson?—A. From the 1st of July, 1880, to November 20, 1880.

Q. Did Sanderson pay you for the whole time?—A. No, sir.

Q. Why?—A. Because he said so many deductions.

Q. You did not carry the mail on time and the department deducted from him and would not pay him because you failed?—A. I did not fail in the agreement I made with him.

Q. This is a quarrel between you and Sanderson, is it not?—A. Yes, sir.

Q. In other words, you claim that you simply agreed to carry it three times a week without reference to time?—A. Yes, sir.

Q. Mr. Sanderson claims you were to carry the mail according to the schedule time. That is his claim. He says you were to carry it on schedule time, does he not?—A. I don't know.

Q. That is his claim, is it not?—A. Yes; he claims that.

Q. And you claim that you were simply to carry it three times a week, without regard to time?—A. Yes, sir.

Q. And this produced a disagreement between you, and Sanderson would not pay you because you made so many failures to get the mail through on time. Is that not the fact about it?—A. That is what he says.

Q. You agreed to carry this mail for Mr. Dorsey. Did you subcontract your contract?—A. I was subcontractor under Mr. Dorsey.

Q. Did you hire somebody else to carry it for you?—A. No.

Q. You did not?—A. I had a partner there for one part of the route.

Q. You made an agreement with him that he should carry it for so much, did you not?—A. He made the agreement at the same consideration as my contract; just at the same rate and consideration.

Q. You got into trouble with him, did you not?—A. Yes, sir.

Q. And you did not pay him?—A. I paid him.

Q. But you had trouble with him?—A. Yes, sir; he put me into court; he sued me.

Q. Sued you for his money?—A. Yes, sir.

Q. Is the suit still pending?—A. I paid him.

Q. Is the suit still pending?—A. No; we made an agreement.

Q. You settled that suit?—A. Yes, sir.

Q. So you had trouble all around in this case?—A. All around.

Q. In this suit did you set up these deductions as a defense?

Mr. BLISS. I am not going to object to going into that, but—

The COURT. [Interposing.] It is not worth while I think to go into that.

Mr. WILSON. If your honor please, I want to demonstrate that this is simply a controversy between this contractor and the subcontractor and the subs under him and all of them.

The COURT. You have shown enough on that point.

Mr. INGERSOLL. Here are all the papers on the subject, his suit and everything about it.

The COURT. I do not want to go into an examination of that controversy.

Q. Did you not make a contract with the man to whom you sublet this work that he should stand all fines and deductions?—**A.** The same contract I made for myself.

Q. You undertook to stand fines and deductions when you made your contract with Dorsey, and then when you made your contract with the other man you made him agree to stand the fines and deductions.—**A.** Just the same, sir.

Mr. INGERSOLL. I hope the court will remember that when they were late on this route a fine and deduction was made on the expedited price but not on the regular price. If he got through within one hundred hours he got his pay for that, but the deduction was on the expedited part. Here are the papers that show it.

The COURT. Of course it would not be anything else but that. If he performed the service they could not take that into account. They might deduct on the expedition but they could not, of course, make any deduction on the service because the service was performed.

Mr. INGERSOLL. Unless he was behind on the schedule time of the original service.

The COURT. Yes; but there was no pretense of that.

Mr. INGERSOLL. Now and then there was a case of that kind caused by high water or something of the sort.

The COURT. I have not seen that.

Q. Do you know about a resolution having been passed by the legislature of New Mexico asking for an increase, &c., on this route?

Mr. BLISS. I object. The question describes the contents of a paper.

Mr. WILSON. I am simply speaking of the character of it, to get at the fact whether he knows.

The COURT. You may ask that question; a similar question was put by the other side.

Mr. BLISS. No; your honor is mistaken; they asked, we did not. I suppose it is proper to ask him whether he knows of the passage of the resolution with reference to the route.

Mr. WILSON. Very well, with reference to mail service on this route.

A. Yes, sir.

Q. Did you ever have a copy of it?—**A.** I think Mr. Miller sent a copy here to John W. Dorsey.

Q. To whom else?—**A.** To Mr. Dorsey or to the Congressman.

Q. To S. W. Dorsey in the Senate?—**A.** I think so, I don't recollect.

Q. He was not in the Senate at that time?—**A.** That was in 1880, I think.

Q. Did you send it to Mr. Romero, the Delegate?—**A.** I don't recollect. Mr. Miller sent the resolution to somebody here; I don't know whom.

Q. Who was Mr. Miller?—**A.** My agent.

Q. Were you a member of the territorial legislature?—**A.** Yes, sir.

Q. To which body did you belong?—**A.** The upper house.

Q. The senate?—A. Yes, sir.

Q. Did you get that resolution passed?—A. Yes, sir.

Q. Did you assist in circulating petitions to have this service increased?—A. No, sir.

Q. You had nothing to do with those petitions?—A. No, sir; not the time when I ran that mail I did not make that circulation.

Q. But before the mail was run.—A. I don't recollect. I think that I signed one.

Q. You know of petitions being circulated?—A. I don't recollect.

REDIRECT EXAMINATION.

By Mr. BLISS :

Q. You were asked something about mines. Were there mines along this route between Ojo Caliente and Animas City?—A. Well, on the road there is no mines.

Q. How near to it?—A. Well, in the San Juan country.

Q. But that is beyond Animas City, is it not?—A. Yes, sir; and on the upper road. There are mines there everybody says, but I never have seen them.

Q. You have been over the road?—A. Yes, sir.

Q. When you were carrying the mail for Mr. Dorsey, and you failed to make the time, fifty hours, what was the reason of it?—A. Because I did not have any experience to make the agreement in that way.

Q. Do you mean that the time could not be made, or what do you mean?—A. I think that I could not make any money.

Q. Why did you not go over the road in fifty hours?—A. Well, because we couldn't do it; there were so many streams, and the road was not a very good one, and on account of snow. The Government commenced to fix the road in that time.

Q. Has the road been improved since?—A. Yes, sir.

Q. How?—A. By the Government.

Q. What have they done to it?—A. They have got bridges over the rivers and fixed some parts of the road.

Q. Has there been a railroad built?—A. Not in that place.

Q. Is there a railroad that takes part of this mail now?—A. I think so.

Q. It comes over by Chama?—A. By Chama.

Q. That is north of Ojo Caliente?—A. North of Ojo Caliente.

Q. When you ran did you run nights?—A. Yes, sir.

Q. What streams were there that were unbridged?—A. The Chama and the Rio Blanco. The San Juan is bridged.

Q. I want the streams that were not bridged then, when you were running for Dorsey.—A. No bridge on the Navajoe and no bridge on the Rio Blanco. They have commenced a bridge there. No bridge on the Florida. That is all the places where there were no bridges.

Q. What bridges are there now?—A. A bridge at Animas City, Florida, Los Pinos, Little Piedra, San Juan, Rio Blanco and Chama.

Q. Before the streams were bridged, how did you get across them?—A. Well, the rivers were not high when I ran the mail there, in September.

Q. When the rivers were high how did you get across?—A. When the rivers were high I went through the mountains in some cases.

Q. What time of the year are the rivers high there?—A. From March to June.

Q. When you were running for Sanderson you say you had no schedule of time?—A. No schedule of time.

Q. Did you run on the same road as you ran when you were running for Dorsey?—A. In the month of July I ran on the same road.

Q. After that did you run on the same road?—A. I ran for Sanderson one month on the same road.

Q. And how after that?—A. The two months I ran on the middle road.

Q. What is the difference between the middle road and the other one?—A. At least forty miles.

Q. Which is the longer?—A. The upper road.

Q. The middle road is the shorter?—A. Yes, sir.

Q. How about the bridges on the middle road?—A. There is no bridge there, but the rivers are not high in the month of July.

Q. You had no agreement with Sanderson to go on a particular time?—A. I refused to make it.

Q. When you first commenced running that route for Dorsey, were there any registered packages?—A. Yes, sir.

Q. As I understand you, it took some time for the postmasters to register packages?—A. It took more time because they had to make a record and enter a receipt for the other postmasters, and sign the receipts.

Q. Do the postmasters sign for every registered package in the mail?—A. Yes, sir.

Q. At each station?—A. At each station; at each post-office, I mean.

Q. Whether you left the packages there or not?—A. Yes.

Q. Suppose you had a package for Animas City; does the postmaster at El Rito have to make an entry of it?—A. Yes, sir.

Q. There is to be an entry in each post-office through which the registered package passes?—A. Yes, sir.

Q. What was this matter that went through the mail when you had six hundred pounds, merchandise or letters?—A. Very near merchandise and papers.

RECROSS-EXAMINATION.

By Mr. WILSON :

Q. If the postmaster takes more than seven minutes in this matter of registering letters you are entitled to credit for the excess of time, are you not?—A. I don't know. If the man gives me credit it is all right.

Q. [Exhibiting railroad map.] This is Ojo Caliente here. [Indicating.] When you commenced carrying this mail for Dorsey were any of these railroads built?—A. No, sir.

Q. Was this road built from here [indicating] across to here? [Indicating.]—A. No.

Q. They were commencing to build this road across here? [Indicating.]—A. Yes, sir.

Q. When you commenced carrying the mail from here? [Indicating.]—A. Yes, sir.

Q. This road had not been built down here?—A. No, sir.

Q. And all this railroad building up through these mountains as far as Silverton has been done since the time that you took this contract with Dorsey?—A. Yes, sir.

Q. There was no railroad, then, from Alamosa over here to Antelope?—A. No, sir; I think not.

Q. That has been built since? [Indicating.]—A. I think so.

Mr. BLISS. There is no road there now. The road is across here.
[Indicating.]

Q. [Submitting a letter.] Did you write that?—A. Yes, sir.

Q. Do you know Mr. David J. Miller?—A. Yes, sir.

Q. [Submitting another letter.] Is that his letter?—A. Yes, sir.

Q. He is the man you spoke about as being your agent?—A. Yes, sir.

Q. And that is his writing, is it?—A. Yes, sir.

Mr. MERRICK. Let me look at the letter.

Mr. TOTTEN. We are not going to offer it.

Mr. MERRICK. He has proved somebody's signature.

The COURT. He has proved Mr. Miller's signature, the man who was his agent; they have not offered the letter yet. Are you through with the witness?

Mr. WILSON and Mr. BLISS. Yes.

The COURT. Then we will take our recess.

At this point (12 o'clock and 30 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. BLISS. On this route we have put in the tabulated statement showing the warrants, the amounts paid, to whom paid, &c. On the other routes we have heretofore followed that by reading the warrants themselves as going to prove the correctness of this statement; but I apprehend it will be unnecessary to occupy the time of the court by reading those warrants.

The COURT. Oh, there is no use to do that.

Mr. BLISS. If any difficulty arises they can be brought in.

HENRY W. WHEELER recalled.

By Mr. BLISS:

Question. [Referring to papers in the hands of the witness.] What have you there?—Answer. I have the reports accompanied by most of the drafts and warrants on mail routes in Colorado, including No. 38145.

Q. Showing payments?—A. Yes, sir.

Mr. BLISS. It seems necessary to read these, your honor.

Mr. TOTTEN. Why?

Mr. WILSON. Not because we require it, your honor.

The COURT. Cannot they be regarded as in evidence without reading them?

Mr. INGERSOLL. Let them all be read; I wish to have them all read.

Mr. BLISS. Mr. Merrick suggests that if we pass this until to-morrow morning we can make up a tabulated statement which will save all the reading; so I will try and do that. I will now put in a tabulated statement of the productiveness upon this route, and without reading in detail, unless asked, I will simply state the revenues for a year.

Mr. TOTTEN. We object to that paper, your honor, as immaterial, and ask for an exception.

Mr. BLISS. For the post-office at Ojo Caliente the gross revenue for the year ending June 30, 1881, was \$81.68, and the net revenue \$31.33. For the post office at El Rito the gross revenue was for the same year \$88.40, and the net revenue \$11.90.

Mr. INGERSOLL. If the court please, I object to this, and the evidence in this case, I think, shows that the objection is a good one, and should have been sustained long ago. The evidence put in by both

parties shows that mail matter from other routes, routes having been blockaded by snow or the carriers having been stopped by high water, whatever they were, were sent over this route, six hundred pounds, and at one time up to two thousand pounds. I think one letter showed that one hundred pounds a day accumulated from other routes at Ojo Caliente. Now, I submit to your honor whether the productiveness of the office at Ojo Caliente would throw the slightest possible light upon the mails arriving there from other routes and passing over that line. If this tabular statement would show the weight of the mail, the amount that came from other routes and went over this line, then I should say that it was material—that is, in their view of the case. In my view of the case it would not be material in any event. But now it is no evidence in the world in this case. For instance, take one of the intermediate post-offices on this line, and they say, “We sold here in 1880 \$4 worth of stamps.” Does that tend to show the weight of the mail that went on that line? Does it tend to show the amount that had to be carried by the carrier? Does it tend to show the necessity for establishing that route? Of course Congress established the route, but does it tend to show the necessity of putting service on once, twice, or three times a week? For that reason I object to it. It simply encumbers this record. It simply lengthens out this trial. It simply takes up the time of the court and the jury and everybody else without accomplishing anything. Suppose it turn out, before we get through, that there was not a single productive route in all—and if there is a star route in the United States, I never heard of it; if there ever was one in the United States that paid its expenses, I never heard of it. But the question whether or not it was productive, is of no importance, and in the light of the evidence that we have heard in this very case that fact is clearly demonstrated.

The COURT. Does not the act of Congress contemplate that productiveness may be taken into account as well as other circumstances?

Mr. INGERSOLL. No, sir; not the slightest. That was a law passed in the infancy of the republic, and that idea about productiveness was utterly and entirely and everlastingly abandoned when we adopted the three cent postage-stamp. In that law it was stated that no route should ever be abolished for lack of productiveness, and that there should be one to every county seat in the United States, whether it paid a dollar or not. It was at the time when the three cent postage-stamp was introduced that we forever bade good-bye to the mean, narrow, miserly policy of saying to any man, “We will not carry your letter unless we get paid for it.” Consequently I say that productiveness has nothing to do with it. It is not the policy of this Government, and has not been since the adoption of cheap postage. If the court will look over these laws, it will see that day by day the idea has been abandoned. The old verbiage was kept in the law, but new sections of the law absolutely repeal it, so far as its spirit is concerned. For that reason I object to anything more about the productiveness of these routes.

Mr. MERRICK. If your honor please, productiveness on a route is one of the elements which the law as it now stands upon the statute books requires the Postmaster-General to take into consideration and specially when he contemplates expediting a route. That productiveness as a consideration died out when the three cent postage-stamp was introduced is utterly without foundation in any fact or reasoning upon the law. Three-cent postage was established long before the Revised Statutes, and on page 129 of the book your honor now holds in your

hand, you will find quoted from the Revised Statutes of the United States the following provision :

The Postmaster-General shall provide for carrying the mail on all post routes established by law as often as he, having due regard to productiveness and other circumstances, may think proper.

Now, if I am not mistaken (it is possible I may be), the three-cent postage law was passed long before the Revised Statutes were made ; and yet in the Revised Statutes it is expressly provided that productiveness shall be taken into consideration. I take it, may please your honor, that that is the law to-day.

The COURT. Oh, yes ; it is not worth while to argue it any more.

Mr. MERRICK. I suppose not, of course.

The COURT. [To counsel for defense.] You can have your objection and exception.

Mr. BLISS. The gross revenue of the post-office at Tierra Amarilla, for the fiscal year ending June 30, 1881, was \$197.93 ; the net revenue was \$114.96. For the same period the gross revenue of the post-office at Park View was \$96.23 ; the net revenue \$52.64. The gross revenue at the post-office at Chama for the second quarter of 1881 was \$274.25, and the loss, \$134.93. For the post-office at Amargo there was no income. The net revenue of the post-office at Navajoe up to June 30, 1880, was \$12.03 ; the net revenue, \$8. The gross revenue of the post-office at Pagosa Springs for the fiscal year ending June 30, 1881, was \$605.40 ; the net revenue, \$227.07. The gross revenue of the post-office at Price for the first and second quarters of 1881 was \$24.87 ; the net revenue, \$5.81. For the post-office at Piedra the gross revenue for the year ending June 30, 1881, was \$48.30 ; the net revenue, \$11.21. The gross revenue of the post-office at Pine River for the same period was \$153.66 ; the net revenue, \$61.84. The gross revenue for the post-office at Florida for the same period was \$22.70 ; the net revenue, \$15.69. The gross revenue of the post-office at Durango for the first and second quarters of 1881 was \$2,545.40 ; the net revenue, \$2,053.73. The gross revenue of the post-office at Animas City for the fiscal year ending June 30, 1881, was \$2,121.94 ; the net revenue, \$1,280.93. The gross revenue of the post-office at Parrott City for the same period was \$390.73 ; the net revenue, \$148.95.

I do not read the revenues for the other year. They are on the table, and I simply refer to them.

The table is as follows :

Form of certificate.

(F.)

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, J. H. Ela, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this office, showing the gross and the net revenues of the post-offices located on route No. 33145, Garland to Parrott City, Colorado, from July 1, 1878, to June 30, 1881.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, this 12th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.]

J. H. ELA, Auditor.

Name of office.	Quarter.	Gross revenue.	Net revenue.	Credits.
El Rio, New Mexico.	3 qr., 1878.			
	4 " "			
	1 " 1879.			
	2 " "	\$11 70	\$5 07	
		11 70	5 07	
	3 qr., 1879.	21 50	11 00	
	4 " "	80		\$15 44
	1 " 1880.			20 40
	2 " "	43 50	17 40	
		65 80	28 40	44 84
			Less credits.	28 40
			Total credits.	16 44
	3 qr., 1880.	47 84	19 18	
	4 " "	18 46		10 15
	1 " 1881.			24 06
	2 " "	22 00	3 13	
		68 40	22 31	84 21
			Less net.	22 31
			Credits.	11 90
Ojo Caliente, New Mex.	3 qr., 1878.	24 80	10 27	
Also, on routes 33103 and 33144.	4 " "	21		07
	1 " 1879.	9 01		02
	2 " "	21 26	10 38	
		75 27	20 65	69
			Less credits.	69
			19 96	
	3 qr., 1879.	11 42	2 70	
	4 " "	13 28	3 71	
	1 " 1880.	16 82	6 30	
	2 " "	24 31	6 26	
		65 83	21 06	
	3 qr., 1880.	20 25	7 06	
	4 " "	26 34	10 18	
	1 " 1881.	13 26	2 94	
	2 " "	21 83	11 15	
		81 68	31 33	
	3 qr., 1878.	9 75	16 41	5 82
	4 " "	29 73	9 81	
	1 " 1879.	20 34		18 26
	2 " "			
		68 82	25 22	24 07
			Less credits.	24 07
			1 85	
Tierra Amarilla, New Mex.	3 qr., 1878.			
	4 " "			
	1 " 1879.			
	2 " "			

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
	3 qr., 1879..	\$42 94	.....	\$18 86	.....
	4 " " ..	55 31	.....	36 65	.....
	1 " 1880..	15 68	.....		44 07
	2 " " ..	67 98	.....	46 44	.....
		181 91	.....	101 95	4 07
			Less credits	4 07	.....
				97 88	.....
	3 qr., 1880..	46 56	.....	26 69	.....
	4 " " ..	8 42	.....		5 94
	1 " 1881..	54 83	.....	34 66	.....
	2 " " ..	88 12	.....	59 55	.....
		197 93	.....	120 90	5 94
			Less credits	5 94	.....
				114 96	.....
Park View, New Mex	3 qr., 1878..	11 23	.....	1 10	.....
	4 " " ..		.....		3 89
	1 " 1879..	24 35	.....	18 79	.....
	2 " " ..	42 47	.....	17 55	.....
		78 05	.....	37 44	3 89
			Less credits	3 89	.....
				33 55	.....
	3 qr., 1879..	51 71	.....	21 19	.....
	4 " " ..	66 14	.....	27 07	.....
	1 " 1880..	35 96	.....	4 23	.....
	2 " " ..		.....		.....
		153 81	.....	52 40	.....
	3 qr., 1880..	23 04	.....	15 16	.....
	4 " " ..	42 10	.....	28 68	.....
	1 " 1881..		.....		10 73
	2 " " ..	31 09	.....	19 53	.....
		96 23	.....	63 37	10 73
			Less credits	10 73	.....
				52 64	.....
Chama, New Mex	3 qr., 1878..		.....		.....
	4 " " ..		.....		.....
Discontinued June 7, 1880	1 " 1879..		.....		.....
Re-established July 19, 1880	2 " " ..		.....		.....
	3 qr., 1879..		.....		.....
	4 " " ..		.....		.....
	1 " 1880..		.....		.....
	2 " " ..		.....		.....
	3 qr., 1880..		.....		.....
	4 " " ..		.....		.....
	1 " 1881..		.....		159 28
	2 " " ..	274 35	.....	24 35	.....
		274 35	.....	24 35	159 28
			Less net		24 35
			Excess credits		134 93
Amargo, New Mex .....			.....		.....
Established May 9, 1881 .....			.....		.....
Discontinued July 7, 1881 .....			.....		.....
Re-established Aug. 8, 1881 .....			.....		.....
Also, on route 38247			No account.		.....
Navajoe, Colorado	3 qr., 1878..		.....		.....
	4 " " ..		.....		.....
Established Sept. 10, 1878	1 " 1879..	7 83	.....	2 98	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Discontinued Nov. 6, 1879.....	2 qr., 1876..	\$2 17	.....	\$00	.....
		10 00	.....	3 67	.....
	3 qr., 1879..	12 03	.....	8 00	.....
	4 " " ..		.....		.....
	1 " 1880..		.....		.....
	2 " " ..		.....		.....
		12 03	.....	8 00	.....
		
		
		
Pagosa Springs, Colo..... Also on routes 38170, 38179, 38184, 38903, 39182, and 39247.	3 qr., 1878..		.....		.....
	4 " " ..	27 25	.....	3 32	.....
	1 " 1879..	42 07	.....		\$1 48
	2 " " ..	71 22	.....	13 28	.....
		140 54	.....	16 60	.....
			.....	1 48	.....
			.....	15 12	.....
	3 qr., 1879..	123 37	.....		7 72
	4 " " ..	156 42	.....	41 85	.....
	1 " 1880..	164 97	.....	41 64	.....
	2 " " ..	204 85	.....	61 89	.....
		649 61	.....	144 88	.....
			.....	7 72	.....
			.....	137 16	.....
	3 qr., 1880..	143 09	.....	40 84	.....
	4 " " ..	143 92	.....	53 08	.....
	1 " 1881..	135 48	.....	54 66	.....
	2 " " ..	182 91	.....	78 49	.....
		605 40	.....	227 07	.....
		
Price, Colorado.....	3 qr., 1878..		.....		.....
	4 " " ..		.....		.....
	1 " 1879..		.....		.....
	2 " " ..		.....		.....
	3 qr., 1879..		.....		.....
	4 " " ..		.....		.....
	1 " 1880..		.....		.....
	2 " " ..		.....		.....
	3 qr., 1880..		.....		.....
	4 " " ..		.....		34
	1 " 1881..	16 97	.....	11 85	.....
	2 " " ..	7 90	.....		5 70
		24 87	.....	11 85	6 04
			Less credits..	6 04	.....
				5 81	.....
		
	3 qr., 1878..		.....		.....
	4 " " ..		.....		.....
	1 " 1879..		.....		.....
	2 " " ..		.....		.....
Piedra, Colorado Established May 16, 1879..... Discontinued Jan'y 6, 1880; re-established Jan'y 27, 1880.	3 qr., 1879..	2 18	.....	22	.....
	4 " " ..	16 39	.....	12 06	.....
	1 " 1880..		.....		.....
	2 " " ..		.....		.....
		18 57	.....	12 88	.....
	3 qr., 1880..		.....		.....
	4 " " ..	15 77	.....		2 58
	1 " 1881..	18 19	.....	7 09	1 42
		
		

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
	2 qr., 1881..	\$14 34	.....	\$8 12	.....
		48 30	.....	15 21	\$4 00
			.....	4 00	.....
			.....	11 21	.....
Pine River, Colorado.....	3 qr., 1878..		.....		.....
	4 " " ..	17 48	.....	17 08	.....
	1 " 1879..	16 02	.....	4 47	.....
	2 " " ..	18 71	.....	03	.....
		52 21	.....	21 58	.....
	3 qr., 1879..	25 89	.....	11 44	.....
	4 " " ..	20 85	.....	5 05	.....
	1 " 1880..	47 15	.....	28 39	.....
	2 " " ..	33 70	.....	20 42	.....
		127 59	.....	65 30	.....
	3 qr., 1880..	23 11	.....	12 31	.....
	4 " " ..	27 97	.....	12 17	.....
	1 " 1881..	54 97	.....	31 47	.....
	2 " " ..	47 61	.....	5 89	.....
		153 66	.....	61 84	.....
Florida, Colorado	3 qr., 1878..	6 99	.....	4 36	.....
	4 " " ..	3 37	.....	1 13	.....
	1 " 1879..	4 69	.....	2 26	.....
	2 " " ..	1 64	.....	25	.....
		16 69	.....	8 00	.....
	3 qr., 1879..	5 38	.....	3 07	.....
	4 " " ..	4 53	.....	2 03	.....
	1 " 1880..	3 56	.....	2 39	.....
	2 " " ..	2 22	.....	83	.....
		15 69	.....	8 22	.....
	3 qr., 1880..	2 70	.....	1 42	.....
	4 " " ..	9 04	.....	6 74	.....
	1 " 1881..	10 96	.....	7 53	.....
	2 " " ..		.....		.....
		22 70	.....	15 69	.....
Durango, Colorado, also on route 88156	1 qr., 1881..	663 55	No account..	421 88	.....
	2 " " ..	1,881 85		1,631 25	.....
		2,545 40		2,053 73	.....
Animas City, Colorado.....	3 qr., 1878..	191 63	.....	52 08	.....
	4 " " ..	136 27	.....	51 28	.....
	1 " 1879..	171 17	.....	85 51	.....
	2 " " ..	144 01	.....	56 94	.....
		643 08	.....	247 70	.....
	3 qr., 1879..	150 82	.....	70 20	.....
	4 " " ..	320 31	.....	157 29	.....
	1 " 1880..	334 99	.....	176 39	.....
	2 " " ..	257 25	.....	129 04	.....
		1,063 37	.....	532 92	.....
	3 " 1880..	452 54	.....	238 12	.....
	4 " " ..	667 94	.....	417 94	.....
	1 " 1881..	614 58	.....	393 70	.....
	2 " " ..	326 88	.....	231 11	.....
		2,121 94	.....	1,280 93	.....
Parrott City, Colorado	3 qr., 1878..	54 00	.....	9 14	.....
	4 " " ..	42 55	.....	7 10	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Also on routes 38145 and 38172	1 qr., 1879..	\$49 00	.....	\$14 20	.....
	2 " " ..	42 00	.....	15 32	.....
		189 55	.....	45 76	.....
	3 qr., 1879..	60 00	.....	20 11	.....
	4 " " ..	81 44	.....	46 29	.....
	1 " 1880..	70 00	.....	26 62	.....
	2 " " ..	82 97	.....	24 50	.....
		294 41	.....	117 52	.....
	3 qr., 1880..	128 12	.....	54 70	.....
	4 " " ..	49 51	.....	5 22	.....
	1 " 1881..	99 72	.....	54 62	.....
	2 " " ..	113 38	.....	34 41	.....
		390 73	.....	148 95	.....

JOHN T. CALLAHAN recalled.

By Mr. BLISS:

Q. You have already been sworn in this case?—A. Yes, sir.

Q. You are a clerk in the inspection division, I think?—A. Yes, sir.

Q. [Referring to papers produced by witness.] What are these papers that you have furnished me?—A. These are cases of deduction belonging to the inspection division of the Post-Office Department, Second Assistant Postmaster-General's Office, on route 38145.

Q. Would they show remissions, if there were any made?—A. Yes, sir; they would show the remissions indorsed on the back of them. Here is a remission. [Indicating.]

Q. They show the remissions as well as the deductions?—A. Yes, sir.

Q. Do you know the signatures of these papers?—A. Yes, sir.

Q. I show you a jacket indorsed 1880, quarter ending 31st March Whose signature is on it?—A. General Brady's.

Q. [Submitting another paper.] I show you another jacket indorsed 1879, quarter ending December 31st. Whose signature is that?—A. That is General Brady's signature.

Q. [Submitting another paper.] I show you a jacket indorsed 1881, quarter ending December 31. Whose signature is that?—A. That is General Elmer's.

Q. [Submitting another paper.] I show you a jacket indorsed 1880, quarter ending 31st of December, and ask you whose signature is there?—A. General Brady's.

Q. [Submitting another paper.] I show you a jacket indorsed 1881, quarter ending June 30. Whose signature is that?—A. Mr. Lyman's.

Q. Who is he?—A. The chief clerk of the office of the Second Assistant Postmaster-General.

Q. [Submitting another paper.] I show you a jacket indorsed 1879, quarter ending September 30. Whose signature is that?—A. Mr. French's.

Q. Who was Mr. French?—A. Mr. French was the chief clerk of the office of the Second Assistant Postmaster-General.

Q. [Submitting another paper.] I show you a jacket indorsed 1881,

quarter ending 31st of March. Whose signature does that bear?—A. That is Mr. French's also.

Q. [Submitting another paper.] I show you a jacket indorsed 1880, quarter ending June 30. Whose signature is that?—A. That of General Brady.

Q. [Submitting another paper.] I show you a jacket indorsed 1880, quarter ending September 30. Whose indorsement is that?—A. Mr. French's.

Q. [Submitting another paper.] I show you a jacket indorsed 1878, quarter ending 30th of September. Whose signature is that?—A. General Brady's.

Q. [Submitting another paper.] I show you a jacket indorsed 1878, quarter ending December 31. Whose signature is that?—A. Mr. French's.

Q. [Submitting another paper.] I show you a jacket indorsed 1879, quarter ending 31st of March. Whose signature is that?—A. General Brady's.

Q. [Submitting another paper.] I show you a jacket indorsed 1879, quarter ending June 30. Whose signature is that?—A. Mr. French's.

Q. [Submitting another paper.] I show you a jacket indorsed 1881, quarter ending September 30. Whose signature is that?—A. General Elmer's.

Q. Tell us the course of procedure in the office with reference to the imposition of fines for non-performance of service, for failure to perform according to the schedule of time.

The WITNESS. On expedited routes?

Mr. BLISS. Yes.

A. We charge up for all failures to arrive on time.

Q. Where do you get your evidence of failures to arrive on time?—

A. We get it from the mail bills that we dispatch over those routes.

Q. Suppose there are no mail bills?—A. We then have to make it up as best we can from the records of arrivals and departures.

Q. And they are made up, and then an order for deduction is made, is it?—A. Yes, sir.

Q. Signed upon the jacket?—A. Signed upon the jacket.

Q. Then suppose there comes a remission, how is that?—A. The evidence from whoever it may come is taken into consideration; but probably the greatest stress is laid upon that evidence put in by the postmaster.

Q. Then the order for the remission is made upon the same jacket as the order imposing the fine?—A. Yes, sir; on the back of it.

Q. Are the papers on which fines are imposed and where there are remissions made placed in the same jacket?—A. Yes, sir.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. These papers belong to the inspection division, do they?—A. Yes, sir.

Q. Where have these papers been? Have they been in the inspection division all the time? Take for example that package [indicating], I have never opened it and do not know what is in it. Where have those papers been?—A. They have been in our division; but it is very probable they have been out of our division in Mr. Woodward's hands for investigation; but of that fact I am not aware.

Q. How long have they been out of your division, as you understand it?—A. Well, I do not know how long they have been out or whether they have been out at all.

Q. Has Mr. Woodward been getting papers out of the inspection division?—A. Yes, sir; he has been getting papers from time to time.

Q. With reference to these routes that have been under examination?—A. Yes, sir.

Q. How long has Mr. Woodward kept these papers out?—A. Just as long as he felt like it.

Q. I will ask you to open that package and state whether or not all the papers that ever were in it are still there.—A. That is a thing that it would be utterly impossible for me to tell, because the package was made up anterior to my going into the office.

Q. Is there any package here that was made up since you went into the office?—A. Yes, sir; June, 1881, and September, 1881.

Mr. WILSON. [Handing a package to witness.] Look at this package which Colonel Bliss hands me.

Mr. BLISS. That merely covers the period:

Mr. WILSON. Don't give me any of the little ones. I want a good, large one.

Q. Now, can you tell whether every paper that was in that jacket when it went out of the division is still there?—A. No, sir; I cannot tell.

Q. There might be a dozen papers not in that jacket that were in that jacket?—A. There might be; but I hardly think it is possible.

Q. If you can state to the jury that every paper that ever was in that case is there now, I want you to state it, and if you cannot, I want you to say that you cannot.—A. I cannot say that possibly.

Q. Is there any means by which anybody can know that those papers comprise the papers upon which the fines or deductions were made, and upon which the remission was granted, if remission has been granted in a particular case?—A. Well, by going over the papers, and going over the face of the case I might be able to tell, because all the papers that go into the case will show on the face of the case that they are inside from the dates, but not from a memorandum.

Q. Who made that indorsement in red ink?—A. I made that indorsement.

Mr. WILSON. The indorsement reads as follows:

Ojo Caliente to Pagosa Springs. Contractor, J. W. Dorsey. Residence, Washington, D. C., box 706. Miles, 115. Trips per week, 7. Pay, \$20,625.66.

The figures it is hardly necessary for me to read.

Ojo Caliente. Late arrivals, mails due November 8, 10, 11, 13, 14, 17, 18, 21, 23, 25, 27, 28, 29, December 1, 3, 4, 5, 6, 8, 10, 11—total, 145 hours. Failed to arrive and depart October 1 and 3, and to arrive November 1.

Q. What does that indicate on the back?—A. That indicates the failures on that route during the period covered.

Q. And covering those particular days?—A. Yes, sir.

Q. How did you find out that those failures had occurred?—A. From the mail bills that should be inclosed and from the record of arrivals and departures.

Q. Those papers come to you by mail from the postmasters?—A. Yes, sir.

Q. At the terminal points?—A. At the terminal points.

Q. Those communications or reports coming to the department are

distributed in the mail room and sent to your division and you make up this statement on the back, showing just what the reports show?—A. Yes, sir.

Q. And then for the first time you carry that to General Brady?—A. No, sir; we carry it to the head of our division, and then it goes through a re-examination as to whether it is correct or not.

Q. What I mean is this: In the inspection division after you have made this up from the reports that come to you and you have verified the accuracy of this that you put upon the back of it, then you carry it to General Brady or whoever may be Second Assistant—for instance, you carry it in to Mr. French and he writes his name there and that constitutes the order for fine, and if afterwards it is found out by the process to which I will call your attention in a moment, that the fine or reduction ought to be remitted or removed, then it goes through the same process, and it is carried to him, and he signs the order that you have prepared for him?—A. Yes, sir; that is the general way in which it is done; but the clerk who makes up those cases does not take them to the head of the office but they are first carried to the head of our division, and the head of our division sends them in by a messenger to the head of the office for his action.

Q. So that, in making up these fines and deductions in the inspection division you first take all these reports that come from the terminal offices?—A. Yes, sir.

Q. Make it up there, verify it the best you can, and then it is carried ultimately to the Second Assistant?—A. Yes, sir.

Q. That is the first time his attention is brought to it, is it not?—A. Yes, sir; that is the first time.

Q. And the information that he gets is what you give him by your brief with the papers inclosed?—A. Yes, sir.

Q. Now, we will come to the question of remission: After these fines have been made, or these deductions have been made, if an application is made for the remission or removal of these fines and deductions what is the process through which it goes and where is it done?—A. Well, we make up a brief of the evidence that is submitted.

Q. In the first place you are commencing where you begin; upon what do you act? Where is the first action taken? Does the contractor or the subcontractor, as the case may be, send the evidence here and make his application for remission?—A. Sometimes it is made by mail and sometimes by making out a written application and submitting it to the head of the division.

Q. Does the contractor or subcontractor produce his proof?—A. Yes, sir. It must necessarily be substantiated by evidence.

Q. That evidence is brought into the inspection division?—A. Yes, sir.

Q. And there it is examined?—A. Yes, sir.

Q. And then a brief is made something like this: Take one of these cases and see if you find a case of remission.—A. This [indicating] is the only case of remission. It is made out in pencil, or any way, and then submitted to the head of our division for his review. I do not know how it was done at the time this was made up in June, 1880. I had nothing to do with this; but now it goes to the head of the office for him to review also, and if he approves of it, he sends it back to us to write out the brief on the back of it, and the remission is accordingly made. That is the way of doing it now, but it was not exactly the way of doing it then.

Q. What was the way of doing it then?—A. Generally it was sub-

mitted to the head of the division, and he approved it or disapproved it as the case might be; but sometimes he would take it to the head of the office.

Q. That is, to the Second Assistant?—A. Either to him or to the chief clerk who might be acting.

Q. To recapitulate a little. You make your fines and deductions up in your office upon reports you get from the postmasters, and then if there is an application for remission, the proofs are submitted to the inspection division, and upon them you make up your brief?—A. The brief for remission.

Q. And these things are carried to the head of the contract office for his signature to authorize granting remission where the fines and deductions are remitted?—A. Yes, sir.

Q. That is just where they are imposed, and second where they are remitted?—A. Yes, sir.

Q. That is the process through which this thing goes?—A. Yes, sir.

Q. Now, I wish you to take all these papers and tell me in whose handwriting the entries are made in red ink on the jackets that have been handed to you.—A. This one, for the quarter ending December 30, 1878, is in the handwriting of Mr. Gonsalves.

Q. Who is he?—A. An inspection clerk in our office. That for the quarter ending December 31, 1878, is also in his handwriting; that for the quarter ending March 31, 1879, is also his handwriting; that for the quarter ending June 30, 1879, is also Mr. Gonsalves's handwriting; that for the quarter ending September 30, 1879, is also Mr. Gonsalves's handwriting; that for the quarter ending June 30, 1880, is in Mr. Gonsalves's handwriting; that for the quarter ending December 31, 1879, is in the handwriting of Mr. Ramage; that for the quarter ending September 30, 1880, is in Mr. Gonsalves's handwriting; that for the quarter ending December 31, 1880, is in Mr. Gonsalves's handwriting, as is also that for the quarter ending March 31, 1881; that for the quarter ending June 30, 1881, is in my handwriting; that for the quarter ending September 30, 1881, is in my handwriting; that for the quarter ending December 31, 1881, is in my handwriting; that for the quarter ending March 31, 1881, is in Mr. Gonsalves's handwriting.

Q. Now, I want you to tell the jury whether it would be possible for the Second Assistant Postmaster-General to have the contractors wrongfully fined, or wrongful deductions made upon them without his conspiring with the clerks who have this thing in charge——

Mr. BLISS. [Interposing.] Your honor, I do not object to this question——

Q. [Continuing.] Or with the postmasters who sent in their reports?

Mr. BLISS. [Continuing.] Or this general course of examination; but I submit that having put the witness on the stand to identify certain documents that this is not the proper time for such an examination. When I am through, then, if Mr. Wilson desires to question him on this subject, it may be proper; but at this stage it seems to me that it ought not to be done.

The COURT. We do not want his opinion, anyway.

Mr. BLISS. I do not object.

Mr. WILSON. I am not asking his opinion.

Mr. INGERSOLL. Then, ask him how he can do it without conspiring.

The COURT. It is not cross-examination.

Mr. BLISS. It certainly is not on the point which I offered in the testimony.

Mr. WILSON. If it is objected to on that score it is a different thing.

Mr. BLISS. I shall not object to it at the proper stage.

Mr. WILSON. Then, I am through now, but I do not want Mr. Callahan to leave the stand.

Mr. BLISS. No; I do not mean that he shall.

I now offer in evidence the jacket indorsed as follows :

State, Colorado. Route, 38145. Year, 1880. Quarter ending March 31. Termini of route, Ojo Caliente and Animas City. Contractor, J. W. Dorsey. Address, care of M. C. Rerdell, box 106, Washington, D. C. Miles, 174½. No. of trips per week, 3. Pay. \$13,423.04. One half trip, \$42.91. Expedited, \$8,457.84. Expedited half trip, \$27.02,

Q. What does that mean?—A. Expedited pay. That is the difference between the original pay and the expedited pay.

Q. So much per trip is it?—A. So much per half trip; going once over the route; not making the round trip.

Mr. BLISS. [Continuing to read:]

Expedited from 90 to 50—40 hours Animas City.

January 2nd, 30th. February 1, 13, 18, 27. March 7, 10th, 14, 19, 28, 31, failed to arrive.

January 2, 23, 28, February 4, 13, 18, 27. March 1, 10, 15, 19, 29, 31, failed to depart.

Expedition lost on 55 half trips.

Late arrivals 251½ hours.

P. M. Animas City reports snow, heavy mails, and insufficient supply of forage on account of the presence of U. S. troops. Deduct \$2,192.23.

BRADY.

On the back the following:

August 19, 1880. It having been shown by the following evidence, to wit, statement of the postmaster at Animas City, that the loss of expedition and late arrivals were due to "physical impossibility," resulting [1] from deep drifting snows, rendering the route impassable; [2], all supplies and forage on the route being taken by the military authorities during the Ute campaign; therefore,

Remit \$1,655.98 for deduction noted in report for week ending May 8, 1880.

BRADY.

Inside of this are a large number of papers.

The next is a paper indorsed 38145, August 16th, 1880.

Letter of J. W. Dorsey, requesting a remission of deduction made for quarter ending March 31st, 1880.

The letter is as follows :

WASHINGTON, D. C., August 16, 1878.

Hon. THOMAS J. BRADY,

Second Assistant P. M. General :

SIR: I would respectfully ask that the deductions made from my pay for service on route No. 38145, for the quarter ending March 31st, 1880, be remitted, because all failures or detentions in such service were unavoidable by any human effort, and were caused first by severe winter weather, with deep drifting snow, rendering the roads impassable; and, second, because all supplies and forage in the section through which the route runs were appropriated by the U. S. Army, sent there during the Ute campaign.

I have the honor to submit the following inclosures in support of my application.

First. Exhibit No. 1. Statement of the postmasters of four principal offices on said route to show that said service was faithfully performed; that all mails due up to date, April 8th, 1880, arrived and were delayed only by unprecedented severe weather; that the bulk of mail was greatly increased over this route by reason of other routes being closed by heavy snowfall.

Second. Exhibit No. 2. Letter of D. J. Miller, showing the difficulty of carrying over this route during said quarter, and that carriers were frozen and disabled in the attempt to faithfully perform the service.

Third. Exhibit No. 3. Copy of letter from John M. Trew, P. M. at Animas City, Col., dated April 14th, 1880, showing that not only through the winter the service had been performed under the greatest difficulties, but at this late date the route was

blocked with snow, and forage was not to be had. Especial attention is called to this letter, now on file in the department.

I am, very respectfully,

J. W. DORSEY.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 108 E.]

Inclosed in the jacket is also the following petition :

We, the undersigned, postmasters on route 38145, from Ojo Caliente to Animas City, hereby certify that Pedro J. Jaramillo has carried the mails over said route since about the 1st of October, 1879. The mails have not arrived and departed on time during a part of the winter, owing to the very bad, cold weather and the unprecedented amount of snowfall, although he has managed to get all mails through that are due up to date. He has also carried the mail over this route that should have been carried from Conejos to Pagosa Springs, and, in addition to this, did, during the snow blockade, carry the mail from Rico and that part of Colorado. And so it will be seen that during the very worst of the winter he has carried three mails, which were very heavy, and we believe he has done as well as possible under the circumstances, and we most respectfully suggest that he be paid for his services.

April 9th, 1880.

TULLY KEMP,
P. M. at Pagosa Springs, Colo.
T. D. BURNS,
P. M., Tierra Amarilla, N. M.
W. E. BROAD,
P. M., Park View, N. M.
JESUS HERNANDEZ,
Ojo Caliente, N. Mex.

[The petition just read was submitted to the clerk to be marked, and was by him marked 109 E.]

The next is a letter, and is as follows :

H. M. ATKINSON,
Surveyor-General.

DAVID J. MILLER,
Translator & Ch. Clk.

UNITED STATES SURVEYOR-GENERAL'S OFFICE,
SANTA FE, NEW MEXICO, February 21, 1880.

M. C. REIDEL, Esq.,
Washington, D. C.:

DEAR SIR: I received yesterday your printed letter of the 7th inst, being statement of the department allowance for the December 31st, quarter for Mr. Jaramillo's service on route 38145.

Mr. J., who is now present, states that the service was performed without any material failure of any class, and that the monthly reports of the postmasters on the route shows this. Your letter gives only the amount of the disallowance. It does not state any of the reasons for any disallowance. Mr. J. desires a statement of the days (dates) on which the alleged failures occurred, and why the disallowances were each made. He desires to present testimony when he knows what to meet, in order to prove the justice of his being paid, which he is satisfied he can do. Please have the department furnish this; and I would thank you for any suggestions in the premises.

The poor carriers on the route have a very hard time in getting through on their trips on time these snowy times. One of them the other day, crossing the mountain top between Piedra and Animas City, was badly frozen, and will probably lose both feet if he don't die. The snow there now averages, it is said, at least four feet deep.

Very truly, yours,

DAVE J. MILLER.

[The letter just read was submitted to the clerk to be marked for identification, and was by him marked 110 E.]

Unless the gentlemen insist upon it, I do not care to read the other papers inclosed. There is, first, a tabular statement in red ink, showing what happened on each day. Then, here is a loose memorandum. [Exhibiting a paper.] There is a copy of a letter already in evidence [exhibiting a paper], and there are mail bills and schedules of departures and arrivals. [Exhibiting other papers.]

The COURT. I do not see the relevancy of all that evidence anyway.

Mr. BLISS. I do not see the necessity of reading it, sir.

Mr. WILSON. They are read for the purpose of letting the jury know what is in them when they are not to be read.

Mr. INGERSOLL. Let me just make this statement. Now, the idea is here that there was some conspiracy about this matter of having these contractors fined and then remitting the fine or failing to remit the fine; that there is something wrong about this business. Now, if fines were entered against a subcontractor, those fines must have been entered upon some evidence. Originally that evidence is furnished by the postmasters themselves, giving a list of departures and arrivals, the dates and hours.

The COURT. And that course has been shown by the record.

Mr. INGERSOLL. Secondly, by the way bills, all of which are sent to this inspection department. When it appears from the reports of the postmasters and from the way bills that certain failures have occurred, then the clerks in the department make up the amount of time according to the pay, if the court please. Very well. Then that is sent to Second Assistant. Now, manifestly he could not conspire to injure the subcontractor by fines unless he went into partnership with the postmasters or in partnership with the clerks in that department and with the head of that bureau. Now, they say that certain fines were entered up against these parties. Now, if they claim that is wrong, then we insist that the evidence upon which the clerks acted shall be given to the jury.

The COURT. I do not understand that this evidence has any such view as that at all.

Mr. INGERSOLL. Very well; we will let that go. Now, then, what is the second point? If they claim that any of the fines were improperly remitted, then we want the evidence to go to the jury upon which the Second Assistant Postmaster-General acted in remitting the fines.

The COURT. That matter is not a subject of investigation here.

Mr. INGERSOLL. Very well; then why is this in here?

The COURT. I can see, I think.

Mr. INGERSOLL. Then, if it be in here at all, it ought to all be in here.

The COURT. I do not see that.

Mr. INGERSOLL. If there is any point in showing——

The COURT. [Interposing.] The point is just this, that there was a combination of contractors here in the city of Washington who insisted upon having expedition upon routes that did not require it, and where expedition was absolutely impossible.

Mr. INGERSOLL. Yes; but that is not the evidence.

The COURT. The expedition was ordered, and then when it was shown on experiment to be impossible of expedition, the subcontractors were fined to their utter ruin, and the fines were subsequently remitted. Now, if that be the case, as charged in this indictment, that these men were in a combination to have expedition ordered where expedition was impossible to be carried out, and where all the losses were thrown upon the subcontractor, and the contractors, who are the nominal parties here, and who had nothing to do with anybody in the world except with making the contracts with the officers here, and putting the profits in their pockets, I think that this is strong evidence in regard to that.

Mr. INGERSOLL. Very well. Now, then, in the first place, there is no evidence of what the court has stated, as I understand it; not the slightest. Here was an expedition. Certain fines were entered against

subcontractors because they did not carry the mail on the schedule. They asked afterwards to have those fines remitted. There is not one paper that has been read asking for the remission of fines that has given as an excuse that the schedule was too short; not one. If that was the reason they could not perform the service why did they not say so? When they were asking to have their fines remitted why did they not say the time was too short; that it was impossible to make it? They did not say that.

The COURT. The fines were imposed because they fell short in the time?

Mr. INGERSOLL. That is to say, they fell short of fulfilling the contract.

The COURT. All the evidence here from persons who were concerned in carrying the mails on that route goes to show that especially in the winter time, and when the matter belonging properly to two other routes was thrown upon this route, it was a matter of physical impossibility to carry it in that time.

Mr. INGERSOLL. Now, then, that is the reason that those people give; that so much mail was thrown upon the route that they could not make the time. And I submit to your honor that when the snow is five or six feet deep they cannot get it through; when the river is swollen they cannot get across it.

The COURT. They can go around.

Mr. INGERSOLL. They can go around in a week or two.

The COURT. That is what they did.

Mr. INGERSOLL. There was an upper route.

The COURT. The carriers say when the river was high they had to cross it higher up. I do not see myself the relevancy of any of these papers here, and I do not want the time of the court wasted. I can see the relevancy of the general act of Brady, and of the fines in fact, although Brady did not himself impose the fines at all. I can see the relevancy of that act for the purpose of showing, or tending to show in connection with the evidence of the carriers, that the expedition was not needed and was absurd and was ordered in defiance of all prudent considerations for the public interest. I can see how it may bear upon that question.

Mr. INGERSOLL. Now, then, if these parties ask for remission, I want to know if the jury has not the right to know the reasons for it?

The COURT. What matters that?

Mr. INGERSOLL. I want to show the court. The court takes it for granted that that was an impossible schedule. We will prove that it has been carried all the time since on that schedule. It is carried, I believe, to day on that schedule.

The COURT. That may be.

Mr. INGERSOLL. And properly, too.

The COURT. I am merely stating the ground upon which I suppose that the act of imposing the fine is a fact properly considered in the case, and may be given as evidence in this case, and the remission of the fines, too, for that matter. But it is only in the view of showing that the order expediting the time was improper.

Mr. INGERSOLL. Well, now, we are going to show that it is proper, and we will show it. When Mr. Anthony Joseph run it——

The COURT. [Interposing.] I know.

Mr. INGERSOLL. Wait, your honor, I want you to understand it as I do. When Anthony Joseph run it, and when Jaramillo run it—just as long as it was given to the Mexicans to run, and as long as they run it

with horses that they staked out and herded out, and could not find half the time, they were behind time. But when Sanderson took hold of it the schedule was long enough.

Mr. BLISS. I object to Mr. Ingersoll testifying, especially when it is not true.

The COURT. Do you propose to show that by these papers, Mr. Ingersoll?

Mr. INGERSOLL. I propose to show by these papers that these parties, while asking for remission, never once intimated that it was because the time was too short.

The COURT. In that view the papers, so far as the contents of these jackets are papers of that kind, would be proper to give in evidence.

Mr. BLISS. I have read them all, sir; I think so.

The COURT. But I didn't want to spend any more time than necessary upon reading memoranda, and newspapers, and irrelevant matter in these jackets.

Mr. INGERSOLL. Of course I agree with the court in that, but I say also, suppose it should appear fully, which it never will, that this expedition was improvidently made, and suppose it should turn out that it was an improper expedition, utterly improper, that it should never have been put at fifty hours, that it should have been lengthened to one hundred, what does it amount to in this case, unless they show that Brady acted corruptly in it, and that there was money divided, and he got a part of it.

The COURT. As to Brady, the fact will not be sufficient to establish conspiracy, but it is one fact in the case.

Mr. INGERSOLL. All I want to show by these papers is that they do not claim the shortness of the time.

Mr. BLISS. My point is this: I have read from this jacket all the papers that give any reasons looking to anything, either imposing fines or taking them off. The only papers which I have not read are the mail bills, the schedule of departures and arrivals, and two sheets of calculations. Now, I offer these papers, your honor, solely for the purpose which your honor suggested, as showing that the claim being that the time could not be regularly performed—that it was not performed—that that fact was brought home to Mr. Brady, and he having imposed a fine of fifteen or sixteen hundred dollars for failure to make expedition, after that remits that fine, and therefore the Government was out by Mr. Brady's act that fifteen or sixteen hundred dollars. He didn't remit the whole of it, only one hundred and odd dollars. In other words, it paid for expedition which it did not get. Then I propose to follow it with these others right along, showing that there was chronic failure or chronic inability to perform the schedule. That is my position. I do not claim, sir, of course, that there is anything in these papers giving as a reason why fines should be remitted that the time was too short.

Mr. INGERSOLL. If he admits that the reason was not given that the time was too short, I have no more to say on these papers.

The COURT. There is no such thing on these papers, and I do not suppose they would give that reason. I do not think they are relevant.

Mr. TOTTEX. I want to call your honor's attention to section 3962 of the Revised Statutes, which is as follows:

The Postmaster-General may make deductions from the pay of contractors for failures to perform service according to contract, and impose fines upon them for other delinquencies. He may deduct the price of the trip in all cases where the trip is not

performed; and not exceeding three times the price if the failure be occasioned by the fault of the contractor or carrier.

The COURT. I haven't any doubt about that.

Mr. TOTTEK. Now, in pursuance of that the Postmaster-General has prescribed a regulation upon this subject.

The COURT. I haven't any doubt about the power to impose the fine until the subcontractor is ruined, and after his ruin the deductions may be made from the contractor himself.

Mr. BLISS. I wish to correct a statement I made. I see that on the back of these mail bills there are memoranda which I had not discovered which give reasons of failure.

Failed to come on Sunday on account of deep snow.

It is simply a memorandum. I said I had read everything. There is something that I overlooked.

Mr. INGERSOLL. I move to exclude that evidence, unless there is something in that to show that there was complaint made in regard to shortness of the schedule, that is, the quickness of time. Unless there is some such complaint I ask to have that evidence withdrawn from the jury.

Mr. BLISS. Of course, if our theory is correct, that these parties got this expedition in the way it was got, they are not going to complain that the schedule was too short, and so find fault with their superiors. My theory is that every one of these failures to arrive, as stated here in these cases, tends to show that it was impossible to make the schedule time, and when you take up the entire period of this expedited schedule, and you show that there comes along every quarter a mass of deductions, because they did not and could not make the expedited time, extending away down below the time Mr. Ingersoll was talking about—testifying about—that there were through this whole thing, this mass of deductions, the papers covered with them, every one of them goes to bear out our theory that the expedition was impossible. It is in that connection that I offer it.

Mr. INGERSOLL. Only one word more, because I have talked too much about this already. Now, the man who was fined all the time was the contractor or subcontractor, it does not make any difference which; and the man who was fined was the man always who wanted to have the fine removed. Now, if he could give as an excuse that the time was very short, that they had to drive so rapidly that the least impediment or obstruction by way of rains, snow, or high water prevented them getting the mail to the office on time, I say that that would naturally be taken into consideration by the Postmaster-General. I would take it into consideration if I were postmaster, and if I found that I had got the time too short I would remit his fine and lend him the time. But, if the subcontractor through a series of years is fined, you may say, every quarter, and never makes the complaint that the time is short, then I say that the Second Assistant Postmaster-General had no right to infer from the number of failures that it was too short. Of course whenever a contractor takes a line and subcontracts it there is not a case in the world but what the subcontractor has to stand the failure and the fines, otherwise the contractor would put himself utterly in the power of the subcontractor.

The COURT. That is reasonable.

Mr. INGERSOLL. The court can see that. There never was one let in any other way. Now then, when the subcontractor gets fined and asks to have it remitted and does not give as a reason that the time is too

short, I ask the court in all conscience would that tend to throw the slightest suspicion into the mind of the Second Assistant that he had got the time too short?

The COURT. No, it would not, as far as that act goes.

Mr. CARPENTER. One word, if the court please, upon another subject connected with it. Mr. Bliss has just stated that where a fine of \$1,600 was imposed and all remitted except \$100 it would tend to show collusion. Allow me to call attention to the evidence presented by the prosecution at page 850 of this record. The deductions for fines and forfeitures were, \$14,611.76; and the whole of the remissions were, \$1,655.98—a very inconsiderable and contemptible proportion.

The COURT. So far as these papers bring home to the department complaints of that kind I think they are competent evidence. It seems to me that there is a great quantity of them that throw no light upon the subject in controversy at all, and as to all those it is not worth while to spend time upon them. Now, if there be any reasons from the postmasters tending to show that the time was too short, that there was too much expedition on the route, they can go into evidence. But papers that throw no light upon that subject, I think ought to be excluded.

Mr. BLISS. Besides the papers which I have read, the only papers that I find in this jacket other than mail bills showing that the through mail left at a certain time and arrived at a certain time are the following: On the back of the record of arrivals and departures for the month of February, 1880, signed by J. Hernandez, postmaster at Ojo Caliente, there appears the following:

Day of week, Sunday. Day of month, 15. Failed to go on Sunday on account of deep snow from 60 miles west, nevertheless the mail due on Sunday got in on Monday following.

Sunday, 22. Deep snow hindered the carriers from traveling, so as to deliver the mail here on Sunday, yet the mail due on Monday got in on Monday following.

[The paper just read was submitted to the clerk to be marked, and was by him marked 111 E.]

On the back of the record of departures and arrivals for February, 1880, of the post-office at Animas City, certified to by John M. True, postmaster, appears the following indorsement:

Wednesday, 4. Deep snow and cold weather.

Friday, 15. Deep snow and severe cold winds.

Wednesday, 18. Deep snow and severe cold.

Friday, 27. Deep snow and severe cold.

A heavy mail has been turned to this route, in order to relieve route No. 38155, Antelope Springs to Silverton, and the Army having consumed all the forage in the country, this and the deep snow has made it impossible to put stock on the line so as to carry the extra amount of mail through on time.

JOHN M. TRUE, P. M.

[The paper just read was submitted to the clerk to be marked, and was by him marked 112 E.]

On the back of the record showing arrivals and departures from Animas City in March, 1880, signed by John M. True, P. M., appears the following:

The failures this month were occasioned by the snow melting, causing very deep mud and much ice, making roads almost impassable, and there being a much larger amount of mail than usual thrown on this route in order to relieve route No. 38156 from Antelope Springs to Silverton.

Also, the Army having consumed all the forage in the country, it was impossible to put more animals on the line in order to carry the extra amount of mail on time.

[The paper just read was submitted to the clerk to be marked, and was by him marked 113 E.]

On the back of the record of arrivals and departures for January, 1880, signed by John M. True, P. M. at Animas City, appears the following:

Monday, 5. Very deep snow. No trail broke.

Sunday, 25. Very severe snow-storm. Drifting snow and cold.

Sunday, 28. Very deep snow and drifts. No trail broken. Stock gave out.

[The paper just read was submitted to the clerk to be marked, and was by him marked 114 E.]

On the back of the record of arrivals and departures for March, 1880, signed by Jesus Hernandez, postmaster at Ojo Caliente, appears the following:

Sunday, 7. Bad condition of roads caused the mail to delay until Mon. 8 a. m.

[The paper just read was submitted to the clerk to be marked, and was by him marked 115 E.]

There are no other papers in this jacket except those which I have read, I think.

Mr. INGERSOLL. My opinion is that most of those fines ought to have been remitted.

The COURT. I think so, too. I think they ought to have given him a larger amount than was remitted.

Mr. BLISS. We do not question the propriety of the remission, but we question the propriety of the conditions under which the fine was imposed. We make no question of the propriety of the imposition of the fines if the expedition was all right.

The COURT. Now, it goes back to the beginning, as to the sufficiency of the claims of that route to expedition.

Mr. INGERSOLL. And whether it was corruptly expedited.

The COURT. I understand that. Although there might have been good solid reasons for ordering an expedition, as to Brady and probably as to all the rest, unless there was a corrupt combination for that purpose there is nothing to sustain the indictment. I think the only ground upon which this subsequent evidence can possibly be received is for the purpose of throwing some little light back upon the motives of the officers of the department when the expedition was ordered. If they were corrupt, then, in making the order, and their subsequent acts reflect light upon that question the subsequent acts might be given as evidence.

Mr. INGERSOLL. All I want, if we have any of them, is to have all of them.

The COURT. But you see this case is so lengthy, so extensive, and regarding so many transactions that it is necessary to cut off the surplus matters which seem to be hanging around it at every point.

Mr. TOTTEX. It is not our fault.

The COURT. If your plea is right, of course it is not your fault.

Mr. INGERSOLL. If the jacket is introduced, I shall insist upon the reasons being introduced, because the jacket states so many failures, and what the jacket inclosed gave the reasons.

Mr. TOTTEX. The jacket is supposed to contain the digest of the inclosed papers, your honor.

Mr. BLISS. The jacket is an order of Brady making deductions.

The COURT. As to the imposing of the fines, that follows as a matter of course. Those fines are really made before Brady sees them. They follow as a matter of course, after the correspondence comes in showing the failure.

Mr. INGERSOLL. I want the court to know also that the remissions are all entered up before they get to Mr. Brady, that is, the recommen-

dation one way or the other by the under officers, just the same as the fines are put up, and they go to him on a jacket, giving the reasons why they should be remitted; and I want the court to know that all these reasons are born and stated before they get to Brady.

Mr. BLISS. My point just simply is that there is notice brought home to the department, through the record of the department showing failure of trips on a certain quarter going right along.

The next paper is a jacket:

State, Colorado; route No. 38145.

Year, 1880; quarter ended 30 June.

Termini of route, Ojo Caliente, Animas City.

Contractor, J. W. Dorsey.

Residence: care M. C. Rerdell, box 706.

County, Washington; State, D. C.

Miles, 174½; trips per week, 3.

Pay, \$13,433.04; ½ trip, \$42.91.

Exp. \$8,457.84; \$27.02.

Expedited from 90 to 50—40.

Ojo Caliente: Expedition lost on 35 half trips. Late arrivals, 80 hours.

Animas City: Expedition lost on 23 half trips. Late arrivals, 487 hours. 12 failures to arrive and 12 failures to depart (loss of expedition on these failures is included above).

That is all in red ink. Then in black: deduct \$2,260.84, which is crossed out; and underneath that, \$2,140.84. Signed, Brady.

Date of case, 3d of August, 1880.

Reported to auditor, August 7, 1880.

Notice to contractor, August 4, 1880.

[The jacket just read was submitted to the clerk to be marked, and was by him marked 116 E.]

Other than mail bills and schedules of arrivals and departures, the only paper that I find in that is on the back of arrivals and departures for 1880 at Animas City, which is as follows:

The failures during this month were occasioned by the great scarcity of forage for animals, and the impossibility of getting forage from the railroad until the snow is out of the way and the roads passible for wagons.

[The paper just read was submitted to the clerk to be marked, and was by him marked 117 E.]

Mr. INGERSOLL. I wish to call attention to the fact that on each one of those reports, right at the bottom, in print is, "Report of causes." I wish you would read that.

Mr. BLISS. I will read it:

Report causes of all failures on back of record.

On the back of the record there is no report of cause, except the one that I have read.

The COURT. Mr. Bliss, have you finished with this jacket?

Mr. BLISS. Yes, sir.

The COURT. I have serious and very strong doubts whether this is competent evidence, or if it is competent whether it be of sufficient weight to spend the time upon it.

Mr. BLISS. Well, sir, surely, from our point of view, independently of any question whether it is brought home to Brady, if we put in each mail bill and record of the fines, showing, in fact, that the mails did not arrive in time, it is some evidence.

The COURT. It is some evidence, that is true, but in order to charge the Second Assistant Postmaster-General, as he is charged in your indictment, with having made these allowances for expedition corruptly for his own benefit, as well as for the benefit of those with whom he was in association, it seems to me that evidence of this kind is not of much

consequence. You will have to make out some other facts, going, in fact, to the date of the order of expedition, bringing home, it seems to me, the notice of the circumstances to the Postmaster-General, and knowledge sufficient to put him on inquiry as to the character of the route, and that no such expedition was required, and that, in the face of knowledge that he either had or ought to have, he had some motive or other, not to be accounted for in any other way than upon the presumption of corruption upon his part, that he ordered expensive expedition.

Mr. BLISS. Your honor will bear in mind that after all these failures he then went on and increased the number of trips four trips a week at the increased speed. The order for the addition of seven trips succeeds this by a good many months, and on the basis of that he added \$17,910 to the pay of the contractor, and to the pay of the subcontractor only \$10,666. All that was after this record, and the additional four trips were added at the expedited speed, of course.

The COURT. This evidence, it seems to me, would not be affected by that consideration. The expedition is already ordered.

Mr. BLISS. May I interrupt you one moment? You say the expedition is already ordered?

The COURT. Three times a week.

Mr. BLISS. But when he adds four trips at the expedited schedule, he is not called upon to add them at the expedited schedule. He may add them on a less schedule; but he adds them at the expedited schedule.

The COURT. But if the mail matter is required, then he is justified in making the four trips instead of three; but it is the amount of mail matter that would throw some light upon that subject, and not these fines and remissions for the non-performance of the service.

Mr. BLISS. I do not want to argue with your honor. Of course, we shall accept your decision, whatever it is.

The COURT. I think we will not go into that matter any further.

Mr. BLISS. Then, I understand your honor, to rule that the evidence of failures to arrive, whether with or without any order from Brady, based upon that fact, is not proper evidence in this case.

The COURT. I think it has so little weight that it is not worth while spending time upon it, and I will exclude it.

Mr. BLISS. I will yield cheerfully to your honor's ruling. I merely want to know what the ruling is.

The COURT. That is my opinion.

ANTHONY JOSEPH recalled and examined.

By Mr. BLISS:

Question. [Submitting a paper to the witness.] I hand you a paper and ask you if you recognize that as a paper you have ever seen before?

—Answer. [After examining the same.] Yes, sir.

Q. What is it?—A. It a contract entered into by Mr. J. W. Dorsey, or his agent, with me.

Q. Is it an original of the contract which you testified you made?—A. Yes, sir.

Mr. TOTTEN. We do not object to the copy.

Mr. INGERSOLL. Has the copy been withdrawn?

Mr. BLISS. The copy was not put in, sir. I was about to put in the copy before recess, and my attention was called to the fact that the duplicate original had been discovered which had been sent to Mr. Woodward.

Mr. WILSON. Where was this found?

Mr. BLISS. Not on the files of the department at all.

Mr. WILSON. Where did it come from ?

Mr. BLISS. I will ask him.

Mr. WILSON. I do not care about asking him.

Mr. BLISS. The fact is this : Mr. Joseph sent it to Mr. Woodward, and Mr. Woodward had put it among some papers. It has never been on the files of the department. My attention was called to it before recess, and I withdrew the copy for the purpose of putting in the original, which is as follows :

Whereas John W. Dorsey has been accepted, according to law, as contractor for transporting the United States mails on route No. 38145, from Garland, Col., to Parrott City, Col., of one time a week and back, from July 1, 1878, to June 30, 1882, by the United States Post-Office Department :

Now, this indenture witnesseth that on this thirtieth day of January, 1879, John W. Dorsey, party of the first part, and Anthony Joseph, of Taos Co., together with _____, his sureties, making the party of the second part, have agreed as follows, to wit :

The said Anthony Joseph and his sureties, party of the second part, do jointly and severally undertake, covenant, agree, and do bind themselves to transport the U. S. mails on route No. 38145, from Ojo Caliente, N. M., to Parrott City, Col., one trip per week, from the first day of January, 1879, to the thirtieth day of June, 1882, inclusive, in accordance with the advertised schedule time and in full and complete compliance with the requirements of the postal laws and the regulations of the Post-Office Department of the United States, and subject to all the requirements and liabilities of the said contractor with said Post-Office Department, for an annual sum of \$2,360 for one trip, \$3,200 for two trips, and \$5,300 for three trips.

The party of the second part further agrees and covenants that should the Post-Office Department extend the route to embrace new offices, or increase the number of trips per week on said route, they will perform the service required, receiving from the party of the first part full per cent. of pro rata as full compensation for said extension or increase of service.

This contract is based upon an actual distance, at present time, of 260 miles, and should it appear from the certificates of the postmasters of the new offices already established that the distance is not so great, then there shall be a pro rata deduction made.

The said party of the *second* part further agrees and covenants to and with the party of the *second* part that if fines or deductions be made by the Post-Office Department because the mails between the aforesaid places have not been carried promptly and securely as per agreement they will pay the said party of the first part all losses and damages which he may sustain in consequence thereof.

The party of the second part further agrees and covenants that where a coach or other suitable conveyance is used for carrying the mails that they will, without additional charge, carry such employes of the contractor and such newspaper men and such Government and railroad officials to whom contractors shall deem it expedient to grant free passes.

The party of the first part covenants, agrees, and binds himself to pay for each quarter's service within thirty days after the official certificates of service of the postmasters at the terminal and schedule points are forwarded to and rec'd by the inspection division of the U. S. Post-Office Department and duplicates to the contractor, and the collection orders are all returned or accounted for to said contractor.

The party of the first part agrees and binds himself to pay an additional amount of forty per cent. in above-named sums should the schedule time be shortened or lessened from the present schedule.

The party of the second part agrees to use the utmost energy in seeing that the reports of the service are promptly forwarded by the postmaster at schedule points to the department, and also that duplicates copies be forwarded to the contractor.

To the faithful performance of all and every the covenants and agreements hereinbefore mentioned the parties hereto do bind themselves, and in testimony hereof do hereunto set their hands and seals on the date hereof.

JOHN W. DORSEY, [SEAL.]

U. S. Government Contractor.

By M. C. RERDELL,

His Attorney in fact.

ANTHONY JOSEPH, [SEAL.]

Subcontractor.

Witness:

VICENTE MORES.

[The paper just read was presented to the clerk to be marked for identification, and was by him marked 118 E.]

Q. Have you compared that with the copy which was produced here?
—A. I have.

Q. Did you find any differences?—A. Yes, sir.

Q. What is the difference?—A. I find that a portion of the printed matter in the form is excluded from the copy.

The COURT. The copy is not in evidence.

Mr. INGERSOLL. That simply shows that he did not copy it correctly.

CROSS-EXAMINATION.

By Mr. INGERSOLL:

Q. When was that duplicate made?

The WITNESS. This one?

Mr. INGERSOLL. Yes.

A. I think it was made at the time we entered into the contract.

Q. At the same time, was it not?—A. The same time.

Q. Then, you were mistaken when you said that there was only one made, and that you took the copy because there wasn't time?—A. I was mistaken; I sent it here.

Q. You took a copy at the time you sent it to Mr. Woodward?—A. Probably; I do not remember.

Q. Then, there is no point in the other party having run off with the original contract to Washington; you know you were asked what was said at the time they took away the contract from you; as a matter of fact you kept one, too, just the same as they?—A. That is true.

Q. Then it is a mistake about what they agreed to do with it?

The WITNESS. About placing it on file?

Mr. INGERSOLL. Yes.

A. It is not. I think I spoke to him at the time about sending mine.

Q. About sending yours, but not about putting it on the files?—A. He said he was going to Washington, and he would attend to the matter.

Q. Attend to what matter?—A. Placing it on file.

Q. Which one?—A. I do not know whether he meant the one he had or mine. I desire to have that portion of my evidence corrected. I also desire another correction made. I made an error in stating in my evidence about the year I met Senator Dorsey in New Mexico. Now, I remember that I met him in 1876, during the summer of that year.

By Mr. BLISS:

Q. That was the first time you met him?—A. That was the first time I met him.

By Mr. INGERSOLL:

Q. Now, as you have spoken about that, I will ask you what your relations with Senator Dorsey were from 1876 on?—A. Of a most friendly character.

Q. Has Senator Dorsey done any favors for you in the Territory in the Senate here, in the way of mail facilities, or anything else?—A. He had for the section of the country in which I resided.

Q. Had you corresponded with him on this subject?—A. Yes, sir.

Q. Had you asked him to get mail facilities for that country?—A. Yes, sir.

Q. Had he done anything for you?—A. Yes, sir.

Mr. INGERSOLL. That simply accounts for Dorsey suggesting him as a man to be written to.

JOHN M. TREW sworn and examined.

By Mr. BLISS :

Question. Where do you reside?—Answer. I reside in Durango, Colorado.

Q. Where is Animas City with reference to Durango?—A. Two miles north of Durango.

Q. Were you ever postmaster at Animas City?—A. I was.

Q. How long?—A. From July, 1877, to March 31, 1881.

Q. As such postmaster had you any knowledge of the mail route from Animas City, or Parrott through Animas City, to Ojo Caliente?—A. Yes, sir.

Q. That mail passed through your office, did it not?—A. Yes, sir; that was on the route, and the terminus part of the time.

Q. Upon that route do you know what the number of trips was from the 1st of July, 1878, to the 29th of April, or to the 12th of May, 1879?—A. I believe it was a weekly service at the time.

Q. Who performed the service at that time?—A. I do not know.

Q. Did you ever know of Mr. Joseph performing any service in connection with that route?—A. Yes, sir.

Q. Do you know during what period?—A. I could not tell now without the papers or records of the office.

Q. When there was one trip a week performed what was the time?

Mr. WILSON. Oh, now, that is of record, your honor.

A. I do not know anything about that.

The COURT. He does not know.

Q. Do you remember, in 1879, receiving from the Post-Office Department some schedules, with the request to fix the time?—A. Yes, sir; I believe several of that kind came.

Q. Have you ever been over that route?—A. Not all of it.

Q. What portion of it have you ever been over?—A. From Animas City to Chama.

Q. Where is Chama?—A. It is on the Chama River, just east of the Continental Divide and west of the Conejos Range.

Q. [Submitting a paper.] I hand you schedule marked 45 E; does it bear your signature?—A. Yes, sir.

Q. Please look at it. Is the statement that it contains correct?—A. Yes, sir; that is correct.

Q. What do you mean by saying that the mail is of only local importance from Pagosa Springs to Animas City?—A. No mail came over that route to Animas City, except occasionally a stray letter.

Q. How did the mails coming from the eastward get to Animas City?—A. Alamosa, by Del Norte, Antelope Springs, and Silverton.

Q. And did not come around by Ojo Caliente?—A. No, sir; sometimes they sent them that way, but I always made a fuss about it, and had them put back on the other route.

Q. Which was the most direct route?—A. I do not know; they were not, either of them, very direct. We always got them through quicker and on better time by Silverton.

Q. [Submitting two papers.] I hand you papers marked 47 and 48 E, and ask you if they bear your signature?—A. Yes, sir; both of them.

Q. Please read 48 E and see if the statement therein contained is correct.—A. [After reading it.] Yes, sir; that is correct.

Mr. BLISS. 47 E repeats the other statement about local importance ; 48 E states :

We, the undersigned, deem it both impossible and impracticable, under the present bad condition of the roads, mountain passes, etc., to recommend a shorter schedule of running time than six days each way as heretofore.

Q. What was the difficulty at that time ?

Mr. INGERSOLL. What is the date ?

Mr. BLISS. It is indorsed 1879, May 31. There appears to be no date inside.

Mr. TOTTEN. There is a date to the circular.

Mr. BLISS. There is not a date to the circular.

Mr. WILSON. This does not seem to have been sent out by the department at all.

Mr. BLISS. Why not ?

Mr. WILSON. It is not indorsed by anybody.

Mr. BLISS. It is indorsed, and we have proved the indorsement.

Mr. WILSON. There is no evidence that the department ever sent it out.

Mr. BLISS. The papers are on the files of the department and bear the indorsement of your clients ; at least we have proved their indorsement by a clerk in the department. It may have been Mr. Coon ; I do not remember.

Q. What was the condition of things at that time that made it both impossible and impracticable to have less than a six days' schedule ?—

A. At that time the streams were not bridged, and the mail could not be brought in regularly at all in the summer time. In the winter time there was too much snow.

Q. At that time was it possible to carry the mail over the route in fifty hours ?

Mr. INGERSOLL. I object to the question unless they are going to show that he so informed the Second Assistant Postmaster-General.

The COURT. There was notice already given to the Second Assistant, I think.

Mr. WILSON. Not at all ; because that paper was not sent out by the Second Assistant.

The COURT. I understood it was one of the papers obtained from his office.

Mr. INGERSOLL. There is no evidence of it.

The COURT. It bears the indorsement.

Mr. INGERSOLL. It is not signed by anybody.

Mr. BLISS. This schedule is upon the ordinary blank, and addressed to the postmaster at Ojo Caliente. We proved that it came from the files, and is indorsed in the handwriting of a clerk in the office. I do not remember by whom it is indorsed ; Mr. Wilson suggests Mr. Coon and I think very likely that is a fact. At any rate it is proved as the indorsement of a clerk in the contract office.

The COURT. You can ask him the question.

Mr. BLISS. [Reading:]

We, the undersigned, deem it both impossible and impracticable—

Mr. WILSON. [Interposing.] What are you reading it for ?

Mr. BLISS. Never mind. I will have the question repeated.

[The stenographer repeated the question, as follows:]

Q. At that time was it possible to carry the mail over that route in fifty hours ?

Mr. TOTTEN. I object to the question, because this man is not a mail carrier, and probably was never over the route until the railroad was built.

Mr. INGERSOLL. I make another objection. It is the province of the jury, after hearing the facts, to say whether or not you can carry that mail in fifty hours.

Mr. BLISS. I will withdraw the question to save time.

Q. [Submitting a paper.] I hand you a paper marked 49 E, and ask you if it bears your signature?—A. Yes, sir.

Q. I have handed you four of these blank schedules asking a change of time. Have you any recollection of receiving them?—A. I remember receiving a number of them; quite a number that I never replied to.

Q. What did you do with them?—A. I threw them in the waste-basket.

Q. Why did you put them in the waste-basket?—A. Because I had got sick and tired of receiving them and replying to them.

Q. Did you send the same reply every time?—A. Yes, sir.

Q. What was the reply?—A. That I did not want anything to do with that kind of mail route.

Q. That fifty hours was impracticable?—A. Yes, sir.

Q. And yet they kept sending them to you?—A. Yes, sir.

Q. After replying to the—

Mr. INGERSOLL. [Interposing.] Let the witness testify.

Q. [Continuing.] You replied to these four apparently; what was the fact, then?

Mr. INGERSOLL. Then he got mad.

Q. What other than that? Did you reply to any more that you remember?—A. No, sir. I know several came there, but I paid no attention to them.

Q. [Submitting a paper.] I show you 12 E. Please look at it.—A. That is my signature.

Mr. TOTTEN. What is the date of that?

Mr. BLISS. This is April 29, 1879.

Q. Are the statements contained in that letter correct? Please look at it and see.—A. That expressed my idea about it.

Q. So far as there are any statements of facts there, are they correct?—A. I believe they are.

Q. Since 1879, what has been the change in the convenience of traveling upon that mail route, or any portion of it?—A. Bridges have been built.

Q. Something else?—A. A railroad had been built in that country since that time.

Q. [Submitting a map.] Where has the railroad been built? Does that dotted line running across there by Chama indicate the general route of the railroad?—A. Yes, sir; that is very correct.

Q. And it has been extended to where?—A. To Durango and Animas City, and now up to Silverton.

Q. The mail by which you get your matter at Animas City went from where? From Alamosa?—A. Yes, sir.

Q. To where?—A. To Antelope Springs and Silverton.

Q. And came down?—A. Yes, sir.

Q. Was there any direct mail route across from Alamosa to Pagosa Springs?—A. I believe there was one made there once—tried to. They went over with snow-shoes for a while, I believe; could not carry any mail.

Q. There was a Government road attempted to be made there, was there not?—A. Yes, sir.

Q. Was it ever completed?—A. They never made a road. I never heard of but one wagon going over it.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. Do you know when you sent these [Nos. 47 E and 48 E], if you ever did? I am calling your attention more especially to 47 E.—A. I do not see any date on it, but it was some time during 1879.

Q. You lived at Animas City?—A. Yes, sir.

Q. That was the terminal point on this route was it not?—A. It was not at first.

Q. It subsequently became so because they lopped Parrott City off?—A. Yes, sir.

Q. That was about eighteen miles?—A. Twenty miles.

Q. Then it was the terminal point after that?—A. Yes, sir.

Q. You say this mail could not be carried through on a schedule time of fifty hours?—A. Do not think so except occasionally.

Q. Did you report every time there was a failure to carry it through on schedule time.—A. I believe so.

Q. You made truthful reports?—A. That was my intention always.

Q. And what you have said in those reports is what you have had to say to the department with reference to its having been carried on schedule time?—A. Yes, sir.

Q. Do you know that that mail was carried through in fifty hours?—A. Not to my knowledge. It would only go through occasionally.

Q. That is the way you want it to stand, is it?—A. Yes, sir.

Q. Your reports are here on file?—A. I believe so.

Q. If it turns out that it was only occasionally the other way then what would you have to say?—A. That is my recollection clearly.

Q. Will you stand by what you swear to now, or will you stand by your reports made at the time?—A. That is my recollection; that they did not go through very often on time.

Q. Are the reports that you made at the time the truth?—A. Yes, sir; I kept a memorandum at the office at the time.

Q. And you did not tell any lies in your reports for the benefit of these contractors or anybody else?—A. No, sir.

Q. Then, if what you say now is different from what your reports show, you are mistaken, are you not?—A. I should say so. I kept memorandums and made up those reports from the memorandums.

Q. Who was the contractor at the time that you made this report?—A. I do not know that I can tell that. That was not a part of my business.

Q. You do not know who the contractor was?—A. I do not know the date of the report.

Q. There is no date to it, unfortunately. I have shown it to you to get at the date and you do not know.—A. The monthly reports to the department I believe show who was the contractor at the top of them.

Mr. WILSON. Your monthly reports are all right; but I am asking about this report.

Q. When you made out this schedule did you not make it out for thirty-seven hours?—A. I think not.

Q. Are you sure?—A. I am pretty sure about it.

Q. [Submitting 48 E to the witness.] Now look.—A. [After figuring,]

I think that schedule could be made to show thirty-seven, forty-nine, or seventy-three hours either.

Q. Why did you send such a report as that to the department? Did you not make out a schedule here for thirty-seven hours?—A. Never with that intention.

Q. But it ciphers out that way, does it not?—A. You can cipher it out forty-nine or seventy-three hours either.

Q. You were giving the department remarkably definite information when you wrote this, were you not? You will observe that the department wrote on it when they got it:

This schedule allows only 37 hours running time. Make a new schedule allowing fifty hours.

Q. Did you ever make up that schedule allowing fifty hours?—A. I don't know whether I did or not.

Q. You did make up this one?—A. My signature is to that; I wrote in there the departure from Animas City.

Q. All right, thirty-seven hours.—A. Never with any intention of that kind.

Q. That is it, is it not?

Mr. BLISS. [Interposing.] No. [Submitting paper to the court.] I will ask his honor to look at that and see what is there. It should be 59 and 73 instead of 49 and 73.

Q. Well, 37, 49, 59, and 73 would do one as well as the other?—A. Yes, sir.

The COURT. It says:

Leave Ojo Caliente Mondays, Wednesdays, and Fridays at 6 o'clock a. m.

Mr. WILSON. And arrive Sunday. You see when he left on Friday he would get there Sunday morning.

Mr. BLISS. No, he would not.

The COURT. [Quoting.]

Arrive at Animas City Tuesdays, Thursdays, and Saturdays at 7 o'clock p. m.

Mr. INGERSOLL. [Interposing.] That is thirty-seven hours.

The COURT. [Quoting.]

Arrive at Animas City Tuesdays, Thursdays, and Saturdays at 7 o'clock p. m. the succeeding week.

Mr. INGERSOLL. That is right. See what time he leaves.

The COURT. He must leave Animas City, Mondays, Wednesdays, and Fridays at 6 a. m. and arrive at Ojo Caliente Tuesdays, Thursdays, and Saturdays of the succeeding week.

Mr. BLISS. I suggest your honor that the note immediately following shows distinctly what it means.

The COURT. And then they add—

We, the undersigned, deem it both impossible and impracticable under the present bad condition of the roads, mountain passes, &c., &c., to recommend a shorter schedule of running time than 6 days each way as heretofore.

That shows he did not intend to recommend thirty-seven hours.

Mr. WILSON. But he makes out his schedule and then says it ought to be six days.

The COURT. I do not understand it that way. I understand that he leaves Animas City, one end of the route, on Mondays, Wednesdays, and Fridays, and he arrives at Ojo Caliente, the other end of the route, Tuesdays, Thursdays, and Saturdays of the succeeding week.

Mr. WILSON. Turn over the sheet and read the next.

Mr. INGERSOLL. It is the one that is pinned on.

The COURT. [After further reading.] I do not see anything there less than six days.

Mr. INGERSOLL. Unless it be eight days.

The COURT. It is pretty much go as you please.

The WITNESS. It certainly was not thirty-seven hours.

Mr. INGERSOLL. To leave on Monday morning of one week and arrive Tuesday of the succeeding week, it strikes me is eight days to say the least of it.

The COURT. Eight days or more. They say it can be done in less than six days.

By Mr. WILSON :

Q. [Resuming and referring to paper.] You say that this mail from Pagosa Springs to Animas City is only of local importance ?—A. Yes, sir.

Q. Why did you say that ?—A. Because it was the fact.

Q. Does this route run right through Pagosa Springs to Animas City ?—A. Yes, sir.

Q. Why was it only of local importance ; how could it get to be of local importance if there were other points beyond Pagosa Springs down towards Ojo Caliente ?—A. Our section of country had no business or correspondence with that part of the country at all ; there was seldom a letter.

Q. How did you get your mails ?—A. By way of Silverton.

Q. Was that a good route ?—A. Not a very good one.

Q. Was it as good as this one ?—A. A good deal better ; we always got our mail that way ; it was delayed sometimes.

Q. But that was a good one ?—A. No ; I do not say it was a good one.

Q. A good deal better than this one ?—A. Yes, sir.

Q. Why was it better ?—A. Silverton is quite an active town.

Q. That helps the road a good deal ?—A. It helps it a good deal ; people wanted the mail and would get it.

Q. They were determined to have theirs, and if they got it down as far as Silverton, then you got yours ?—A. Yes, sir.

Q. And that made it better to come by way of Silverton ?—A. Yes, sir.

Q. Is that all the reason you can give ?—A. On the other routes the mails would be so long coming, they would get worn out, and you could not distinguish them. You could not get them regularly at all.

Q. One of the troubles in sending it around this other way, over 38145, was that it was so long coming that way it would wear it out ?—A. Yes, sir.

Q. That was one of the troubles ?—A. Yes, sir.

Q. So that your people were anxious to get the mails as soon as they could ?—A. Yes, sir.

Q. They wanted speedy mails, did they not ?—A. Yes, sir.

Q. You got them speedier than you could this way ?—A. Yes, sir.

Q. How was the road ?—A. Usually very good.

Q. While the road around the other way was usually very bad ?—A. Yes, sir.

Q. And very difficult to travel ?—A. Yes, sir.

Q. Of that you are very sure ?—A. Yes, sir.

Q. Now, being sure of that, I want to show you a paper. [Submitting a paper to witness.] Who signed your name right there ? [Indicating.]—A. That is my signature.

Q. Of that there is no mistake. Now, I am going to read you this letter and see what you have to say in explanation of it:

To his excellency the Governor, FREDERICK W. PITKIN,
Denver, Colo.:

SIR: We, the undersigned, engaged in commercial and other business in Animas City and Durango, do most respectfully call your attention to the present condition of the postal service as established on route No. 38155—

Q. What route is that?—A. From Antelope Springs to Silverton, I believe.

Q. [Continuing to read:]

—between Antelope Springs on the eastern slope, and Silverton on the western slope of the Continental Divide, the said route being at present the main artery of postal communication between the east and San Juan, La Plata, and a part of Ouray County, and Northwestern New Mexico.

The aforesaid route, via Grassy Hill, is located and established over one of the most inaccessible passes in the Rocky Mountains, and such is its inaccessibility that in the winter time, covering a period of six months, travel is wholly, or in a great part, suspended, owing to a continuous blockade of snow.

Upon the postal service of this route the people and business men of Southwestern Colorado have depended for their mails, but in vain. At successive periods for the last three years, and for weeks at a time, no mail has been received over this route [except through the exertions of private individuals not connected with the mail service] owing to an impassable snow blockade or a failure of mail contractors through incapacity to carry out the terms of their contract, thereby jeopardizing and causing a delay in all business and monetary transactions in the section of country of which we speak. We therefore ask your excellency to use such means as may be within your power to influence or effect a change of the daily mail service from the aforesaid route via Grassy Hill from Antelope Spring to Silverton, to the Chama via the Denver and Rio Grande Railroad, the latter route [from Chama] being much lower in altitude and passable at all seasons of the year.

Mr. INGERSOLL. It is our route, is it not?

Mr. BLISS. No; it is not.

Q. Is not Chama a station on the Denver and Rio Grande road?—A. Yes, sir.

Q. How did you get your mail from Chama over to your station?—

A. We never did get it until the railroad got there.

Q. How did you get it from there?—A. We never did get it there until the railroad got there.

Q. How did you get it from Chama?—A. After the railroad got there, I believe Barlow and Sanderson brought it by stage over what they call the middle road.

Q. When you were going to change this mail route to Chama, how were you going to get it from there to your town?—A. Our intention was to have a road, and have it brought over the middle road.

Q. What is the middle road?—A. It is a wagon-road which our freight goes over—did at that time.

Q. What is the mail route that goes over that middle road?—A. There never was any until after the railroad got there.

Q. What is the number of the mail route that ran over that middle road. Do you not know that the mail on this very route was carried over the middle road?—A. It was after the road got to Chama. Barlow and Sanderson carried it over that route.

Q. Did not these other parties carry it over that route, too?—A. They could not go over it, and go to Pagosa Springs. Pagosa Springs was on the upper route. They could not go over both at the same time.

Q. They could not go that way on this route?—A. No, sir.

Q. You are very sure of it, too?—A. Yes, sir.

Mr. WILSON. [Reading.]

The Hon. POSTMASTER-GENERAL:

SIR: In view of the rapid and increasing settlement of Northwestern New Mexico and Southwestern Colorado, with important mineral and agricultural interests developed and developing, I heartily concur in the efforts being made to establish daily mail service between Ojo Caliente, N. M., via Pagosa Springs to Parrott City, Colorado.

I have the honor to be, respectfully,

W. G. RITCH.

Mr. BLISS. This paper has been read and is in evidence. It is noted in the record as not having been handed to the clerk to be marked, and that is why I gave it to Mr. Wilson. Perhaps it should be marked in some way.

[The paper last read was marked by the clerk 21½ E.]

Q. [Exhibiting map to witness.] Which way were you going to have that mail come? I want you to point that out on this map according to the letter I have read to you.—**A.** Just about on the road where the railroad was afterwards built.

Q. You say here:

We therefore ask your excellency to change from the aforesaid route via Grassy Hill and Antelope Springs to Silverton, to Chama via the Denver and Rio Grande Railroad.

Here is the Denver and Rio Grande Railroad. [Indicating.] The date of this petition is like everything out there; it has no date on it.

Mr. INGERSOLL. Yes, it has. It has the mark of the post-office on it.

Mr. WILSON. No; it has not even that.

Q. [Referring to map.] There [indicating] is where you wanted that mail to come to, is it not?—**A.** Yes, sir.

Q. Was there any post route across here [indicating]?—**A.** No, sir.

Q. If you were going to get it changed around to Chama I want you to explain to the jury, if you can, how you were going to get it to Animas City?—**A.** I can explain the whole thing we were driving at there.

Q. If you had got the mail around to Chama how would you have got it to Animas City?—**A.** That is only a small portion of what we were driving at. We had other letters. We were trying to get a new mail route before the railroad was built. The Government had made an appropriation for a wagon road. We were trying to get that appropriation expended on this road where we got our freight, and somebody got the best of us, and had that money expended going up on South Mountain, where a wagon never went over. In connection with that we were trying to get that expenditure of money over this route, and then get a mail route running through here [indicating] and some bridges built. That is what we were at.

Q. Suppose, when this petition so numerously signed, and which you headed, had gone to the Post-Office Department, they had acceded to your wishes and ordered the mail around there. There was not a road built over here then, was there?—**A.** No, sir.

Q. Very well. Now, when you had gotten that mail up there, I want you to tell this jury if you did not intend to take it up here on this route [indicating]?—**A.** We intended to have it up there.

Q. But there was no road?—**A.** We would have taken other things into account.

Q. This was only a part of the scheme?—**A.** That is all.

Q. In other words, you were deluding the Post-Office Department by giving them this, and your objective point was something else?—**A.** No, sir; that is not addressed to the Post-Office Department.

Q. It is addressed to Governor Pitkin, asking him to interfere with

letters addressed to him about the things to work together, so that we could get on.

Q. What is said here is true, is it?—A. Yes, sir.

Q. Is it all true?—A. Yes, sir.

Q. This was a very difficult route over there, and people could not get their mails for six months in the year.—A. That had been the case before that time.

Q. That was so?—A. Yes, sir.

Q. And therefore it was necessary to make a change and get the mail running up in this direction? [Indicating.]—A. If we could have got it across there it would have done better.

Q. If you had got it up here [indicating] it would have been better?—A. No, sir.

Q. Why?—A. Because it would have to run fifty miles in the snow.

Q. If they had put on horses and drivers enough they could have got through?—A. Twenty miles there north or south makes a great difference in regard to the snow.

Q. Let us see about this. You say:

The latter route from Chama being much lower in altitude.

That is true, is it?—A. Yes, sir.

And passable at all seasons of the year.

Q. Was it?—A. Except the rivers when the water was high.

Q. You say it was passable at all seasons of the year. How did you know that? There was no road there.—A. There was a road, but not a post-road. That is the way our freight came in.

Mr. BLISS. You asked him about a post-route. You did not ask him about a road.

Q. You wanted the Government to establish a post-road there?—A. Yes, sir; and have it come over the same road we got our freight by.

Q. Why did you not petition Congress for that?—A. We did, and Congress sent an engineer out there and he surveyed a route over the mountains, and that engineer recommended this route and Congress made an appropriation; and after that all was done somebody else came in and had the money spent going up South Mountain.

Q. Please state to the jury why it was that you were going through with this trouble about roads and bridges, &c., in that region of country; why were you doing that?—A. Because we lived there.

Q. You got your freight through well enough over that road?—A. We did not get it through well enough. It would have helped matters to have had the mail over that route.

Q. You were anxious to get your mail as expeditiously as possible?—A. Yes, sir.

Q. Did your people regard it as a matter of great importance for them to get their mails rapidly?—A. Yes, sir..

Q. Were you anxious for that?—A. Yes, sir.

Q. And did you petition for it?—A. Yes, sir.

Q. And would they have been exceedingly glad to have had the mails in fifty hours?—A. Yes, sir.

Q. Was fifty hours too quick for the service in that country?—No, sir.

Q. Was it quicker than the needs of the people required, if the service could be reasonably performed?

The WITNESS. What time have you reference to—what year?

WILSON. I will go back from 1879 on.

A. In the fall of 1879 we considered that we wanted our mails in fifty hours, and as much less as we could get them.

Q. Was not that the sentiment of the people there?—A. Yes, sir.

Q. Did not the needs of the people require that it should be done in fifty hours, if it could be reasonably performed?—A. Yes, sir.

Q. If these contractors, and subcontractors had put on the requisite amount of stock they could have carried it through easily enough in fifty hours, could they not?—A. I don't think they could, when they were traveling the post-route. The army couldn't move there.

Q. That was just simply because there were occasional snow drifts?—A. The army could not get forage for their animals; they had to unhitch them and take them out.

Q. It would have given just about as much trouble at a schedule of fifty hours as seventy-five hours, would it not?—A. We didn't care anything about the mail on that route. If we could have got it we would have cared, but we knew we could not get it.

Q. You could have got it if the contractor or subcontractor had put on the necessary stock?—A. If they could have gone through the air they could have got it.

Q. Do you say that mail could not be carried through there except by going through the air? Is not that an exaggerated statement?—A. Not in the winter time.

Q. Did they not carry it through in an excess of fifty hours? Do you mean to say they could not carry it at all?—A. Oh, they got through if you gave them time enough.

Q. If a man went with one horse it would probably take him two weeks, would it not?—A. I guess it would.

Q. And if he went with two horses he would go through in one week?—A. I think not.

Q. Would it take a dozen to go through in a week?—A. It would take about fifty.

Q. Do you think he could get through with fifty horses?—A. He might get through in that way.

Q. You are telling this jury that you think it would take fifty horses?—A. I think a man could have gone through in a week with fifty horses if he had anything to feed them on.

Q. Would it take fifty horses to go through in a week?—A. I don't know about that. We considered the route impassable and impracticable in the winter because it was blockaded every few days with a fresh fall of snow. They never could get through in the winter. The Army could not get over it.

Q. Did you not report every failure of the contractor to come in on schedule time?—A. I suppose so; that was the calculation.

Q. Did you not know the contractor came in on schedule time a great many times in the winter?—A. I think not, in the winter time.

Q. How much was he behind?—A. I cannot say now.

Q. Was he behind twenty-four hours?—A. Sometimes he was; sometimes he did not get through at all.

Q. But take it as a general rule, how much behind was he?—A. He would be behind every time that there was a snow or rain.

Q. Every time?—A. It would keep him every time.

Q. Do you say that it was impossible to carry that mail through there in the winter season on a schedule of fifty hours?—A. That is the way we looked at it.

Q. I am not asking about the way we looked at it. I want to know if you say it was impossible to carry it through there in fifty hours?—

A. There is scarcely anything impossible if there is money enough to put it through.

Q. Would one hundred hours have been a reasonable time?—A. I think they could have got through in one hundred hours part of the time.

Q. If the contractor had increased his facilities for traveling he could have gotten through in less than one hundred hours, couldn't he?—A. That could not help it much if the snow came down.

Q. You think he could not have put on stock enough to get through in less than one hundred?—A. He could if he had time enough. Give them plenty of time and money they could do it. That is the way they got it over by Silverton.

Q. Have you been acting in the capacity of agent for any of the contractors?—A. I employed carriers for Colgrove on another route.

Q. What route was that?—A. Thirty-eight thousand one hundred and seventy-four.

Q. For any other contractors?—A. No, sir; not that I remember about.

Q. Were you postmaster when you did that?—A. I was, sir.

Q. You have said, Mr. True, that you regarded the receipt of your mails there as being important, and all that. Now, I want you to state whether or not, if a contractor had made his proper arrangements in the summer, provided himself with forage for the winter at each station, and properly stocked his route, he could have carried that mail through there in fifty hours, excepting, of course, cases where the road was blockaded by these snows or impeded by floods?—A. Of course he could do it.

Q. Did you know that the regulations of the department prohibited you from acting as agent of the contractor?—A. I did, sir.

Q. And yet you did it?—A. I did not.

Q. I thought you said you did?—A. I did not say so.

Q. Did you not say you acted as the agent of Colgrove on 38174?—A. I did not.

Mr. WILSON. Then I entirely misunderstood you.

Mr. BLISS. He said he employed carriers.

The WITNESS. I employed carriers on that route at his request when his men failed.

Q. [Resuming.] But you now say if the contractor had made proper provision in the summer season he could have carried the mail through in fifty hours, excepting in cases where these extraordinary storms either filled the roads with snow or caused floods which prevented the crossing of the stream. That I understand you to say.—A. Well, my understanding about it is this: That if a man had money enough and time enough he could carry the mail most anywhere. But we looked upon it as impracticable and next to impossible to carry it over that route.

Q. Who do you mean by "we"?—A. The people of that country. We wanted to get our mails fast, but we didn't want anything to do with that route. We could not get it over that route.

Q. You did not get it the other way?—A. It came through after awhile.

Q. You did not get it through as quick and as fast the other way?—A. We did after awhile. It was blockaded by a difficulty between the contractor and subcontractor.

Q. You said in this other case that the mails were blockaded six

months in the year—that the roads were impassable?—A. Part of the time. The people have got more money now than they had then.

Q. What has that to do with the getting of the mail?—A. A great deal.

Q. How?—A. When the Government failed to get it through the people clubbed together and carried it over on snow-shoes.

Q. When the Government failed to give you the necessary amount of service you thought you ought to have you went to work to carry the mail on your own account?—A. No, sir; we helped the carriers to get through with it.

Q. You expedited the carrying of that mail?—A. Yes, sir.

Q. You did that on your own private account?—A. Sometimes it would be delayed several days, but we had to get it through.

REDIRECT EXAMINATION.

By Mr. BLISS :

Q. As to this letter that was produced about requiring a route to go by Chama; at that time had the railroad got to Chama?—A. No, sir; I think it had not got to Garland yet; I may be mistaken about that.

Q. That letter was written away back?—A. Yes, sir.

Q. Because the railroad had got to Garland before July, 1878, had it not?—A. The San Juan extension had not been determined on at that time. They had determined on the extension south to Garland to Armosa, and south to Santa Fé; but the San Juan extension had not been determined on.

Q. Had the railroad at that time got to Alamosa?—A. I think not.

Q. That route by Chama, and passing from Chama to Animas City was a practicable route, was it?—A. Except in regard to high water.

Q. Your freight for Animas City at that time came in that way?—A. Yes, sir.

Q. How did it come, by Conejos?—A. Yes, sir.

Q. And to Chama; and where from Chama?—A. Our freight in summer would come over the mountain, where the railroad is now, and then we got it around by Pagosa Springs, because the Army built a road at Pagosa Springs, and we go over that in the winter time. It would go around by way of Ojo Caliente, and then come in by Chama and cross by where Chama is now.

Q. What do you call the middle road?—A. Where the railroad is built.

Q. [Indicating on map.] Where this dotted line is in here?—A. Yes, sir; and there is another line still further south than that.

RECROSS-EXAMINATION.

By Mr. INGERSOLL :

Q. I would like to ask you if, upon the middle route at that time, the Los Animas River was bridged?

The WITNESS. At Animas City?

Mr. INGERSOLL. Yes.

A. Yes, sir; there was a bridge built across there in the fall of 1876.

Q. Was the Los Pinos bridged?—A. I believe that was bridged in 1877.

Q. What was the next river going towards Chama?—A. The San Juan.

Q. Is there some such river as the Rio Plata?—A. The Piedro.

Q. Was that bridged?—A. In 1877; yes, sir.

Q. Was the Navajoe bridged?—A. At that time.

Q. Was the Chama bridged?—A. I could not say. I think not.

Q. How far is the middle road below the upper road at Pagosa Springs; how far is it from Pagosa to Navajoe?—A. I should judge twenty or twenty-five miles.

Q. Does the middle road keep about the same distance from the upper road when you cross the Los Pinos?—A. Yes, sir; it keeps just outside of the foot hills, and the upper road is just in the foot hills.

Q. And the further you go down these rivers, the higher the water is?—A. The further down you go, the worse it is when the water is high.

Q. Then the middle route was not as good a route, because it was not bridged?—A. No, sir; you could not go over it well, because there were ferries there; you had to go over on rafts.

By Mr. DICKSON [the foreman:]

Q. Are you still postmaster at Alamosa?

Mr. BLISS. He never was postmaster at Alamosa. He was at Animas City.

A. I resigned the 31st of March, 1881.

The COURT. Adjourn the court now.

Thereupon (at 3 o'clock and 53 minutes p. m.) the court adjourned until to-morrow morning at 10 o'clock.

TUESDAY, JUNE 27, 1882.

The court met at 10 o'clock and 7 minutes a. m.

Present, counsel for the Government and for the defendants.

Mr. BLISS. I offer in evidence a copy of a telegram sent from the Post-Office Department, as follows:

[By Western Union Tel. Company.]

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., January 13, 1881.

To J. L. SANDERSON,
936 Chouteau avenue, Saint Louis, Missouri:

You are hereby authorized to begin daily service from Chama to the nearest point on Ojo Caliente route, 25 miles, and increase service to daily on Ojo Caliente route from the junction made to Animas City from the 15th instant.

THOMAS J. BRADY,
Second Assistant Postmaster-General.

Charge P. O. D. T. J. B.

The paper last read was marked by the clerk 119 E.

I now offer in evidence, without reading, the following schedule produced yesterday.

Form of certificate.

(F.)

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, J. H. Ela, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct description of all contractor's drafts on route No. 38145, Colorado, now on file in this office for the period from July 1, 1873, to Dec. 31, 1881.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, this twenty-first day of June, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.]

J. H. ELA, Auditor.

Description of contractor's drafts on route 38145, Colorado.

Date.	Quarter.	In favor of--	By whom drawn.	Witnesses.	Indorsements.
June 10, 1878	3d qr., 1878...	S. F. Austin, ass't cash. Ger. Am. Nat. Bank.	John W. Dorsey.....	Paul B. Gaylord; Reuben Cox, dep'ty P. M., Junction City, Kan.	S. F. Austin, ass't cash. German Amer. Nat. Bank.
Oct. 1, 1878	4th qr., 1878...	H. M. Vaile	John W. Dorsey.....	J. W. Raymond; C. A. Lounsbury, P. M. at Bis- marck, Dak. Ter.	H. M. Vaile.
Oct. 1, 1878	1st qr., 1879...	H. M. Vaile	John W. Dorsey.....	M. C. Rerdell; L. N. Griffin; C. A. Lounsbury, P. M. at Bismarck, Dak. Ter.	H. M. Vaile.
May 5, 1879	2d qr., 1879...	S. W. Dorsey	John W. Dorsey.....	P. F. Chapman, P. M. at Middlebury, Vt.....	S. W. Dorsey. Middleton & Co.
July 7, 1879	3d qr., 1879...	S. W. Dorsey	John W. Dorsey.....	Otto Luedke; Alvah Ketchum; C. A. Lounsbury, P. M. at Bismarck, Dak. Ter.	S. W. Dorsey. Donnell, Lawson & Co.
Oct. 7, 1879	4th qr., 1879...	S. W. Dorsey	John W. Dorsey.....	M. C. Rerdell; P. F. Chapman, P. M. at Middle- bury, Vt.	S. W. Dorsey. J. W. Bosler.
	1st qr., 1880 ..	S. W. Dorsey	John W. Dorsey.....	A. L. Tracy; P. F. Chapman, P. M. at Middle- bury, Vt.	S. W. Dorsey. J. W. Bosler.
	2d qr., 1880...	J. W. Bosler	John W. Dorsey.....	P. F. Chapman; A. L. Tracy, P. M. at Middlebury, Vt.	J. W. Bosler.
July 10, 1880	3d qr., 1880...	J. W. Bosler	John W. Dorsey.....	L. R. Walker; L. Darling; A. L. Tracy, P. M. at Middlebury, Vt.	J. W. Bosler.
Oct. 1, 1880	4th qr., 1880...	J. W. Bosler	John W. Dorsey.....	L. R. Walker; L. Darling; A. L. Tracy, P. M. at Middlebury, Vt.	J. W. Bosler.
Jan. 4, 1881	1st qr., 1881...	J. W. Bosler	John W. Dorsey.....	L. R. Walker; L. Darling; A. L. Tracy, P. M. at Middlebury, Vt.	J. W. Bosler.
May 10, 1881	2d qr., 1881...	J. W. Bosler	John W. Dorsey.....	W. R. Henderson; A. L. Tracy, P. M. at Middle- bury, Vt.	J. W. Bosler.
June 4, 1881	3d qr., 1881...	J. W. Bosler	John W. Dorsey.....	W. R. Henderson; A. L. Tracy, P. M. at Middle- bury, Vt.	J. W. Bosler.
June 4, 1881	4th qr., 1881...	J. W. Bosler	John W. Dorsey.....	W. R. Henderson, A. L. Tracy, P. M. at Middle- bury, Vt.	J. W. Bosler.

[The schedule was marked by the clerk 120 E.]

I believe that is all the evidence at present on this route. It will be necessary to recall Mr. Joseph for a single question, and that will be all. I will take up next route 38156, from Silverton to Parrott City. The maps have been proved.

The maps of the route last mentioned were then distributed to counsel and to the jury.

ANTHONY JOSEPH recalled.

By Mr. BLISS:

Question. How far was Ojo Caliente from the railroad in 1880?

The WITNESS. At what time in 1880?

Mr. BLISS. After the railroad was built south beyond Ojo Caliente.

The WITNESS. In a direct line, or by the post-road?

Mr. BLISS. By the post-road.

Answer. Fifteen miles.

Q. How far in a direct line?—A. About ten miles.

Q. A letter has been read here from you with reference to want of connection between your office and the railroad; did such a condition of affairs exist at any time?—A. Yes, sir.

Q. When was that?—A. That was when the mail-route from Alamosa to Santa Fé, *via* Ojo Caliente, was discontinued.

Q. Do you know when that was?—A. No, sir; I do not remember.

Q. Was that while you were contractor, or afterwards?—A. Afterwards.

Q. I thought I could refer to the letter, but I do not see it. It is a letter in which complaint was made that they had no mail from Ojo Caliente to the railroad, fifteen miles. Without reference to the letter, in point of fact, there was a time, as I understand it, when you had no mail communication from Ojo Caliente to the railroad?—A. That is to the railroad east.

Q. What, then, became of the mail?—A. We had to send the mails from Ojo Caliente, by way of route 38145, to the terminal point on the San Juan extension of the Denver and Rio Grande Railroad.

Q. What was that terminal point?—A. That was either Chama or Amargo.

Q. You had to send them up, then, northwest?—A. Northwest.

Q. To that point, and then from there struck the railroad east?—A. Yes, sir.

Mr. BLISS. That is all.

Mr. WILSON. That is all.

CLARENCE W. CORNELL sworn and examined.

By Mr. BLISS:

Question. Where do you reside?—Answer. Durango, Colorado.

Q. Have you held any official position there?—A. I have.

Q. What?—A. Assistant postmaster.

Q. Are you still assistant postmaster?—A. No.

Q. Had you ever anything to do with carrying the mail on route 38156 from Silverton to Parrott City?—A. I had.

Q. What had you to do with it?—A. I was mail carrier or driver from the 1st day of July, 1879, to the 1st day of October of the same year.

Q. When you were driver did you go over the whole route or only part way?—A. Part way; but I have been over it.

Q. What portion of the route did you drive over regularly?—A. The portion we call from Silverton to Bowen's, sixteen miles, and then from what we call Carson's Ranch to Animas City.

Q. That is on the lower end of the route?—A. That is on the lower end.

Q. Going from Silverton south sixteen miles, as you say, did you go horseback, or how?—A. I carried it horseback, with the exception of once in a while in a buggy.

Q. How far is Carson's Ranch from the place where you stopped?—A. Twelve or thirteen miles.

Q. What was the place where you stopped?—A. Bowen's Ranch.

Q. How far is it from Carson's Ranch to Animas City?—A. About sixteen miles.

Q. How far is it from Animas City to Parrott City?—A. Twenty miles.

Q. How many drivers were there on that route?—A. There were four drivers on that route.

Q. Who took care of the stock?—A. Each driver took care of his own stock.

Q. How many horses did each driver have?—A. They averaged three horses.

Q. What do you mean by averaging three?—A. Sometimes they would have one horse extra until they made a change; but we ran three horses; that is what we were entitled to, and that is what they allowed us; sometimes we had four horses on one of our runs.

Q. At that time how many trips a week were being made?—A. Seven trips a week.

By the COURT:

Q. That was in 1879?—A. The 1st of July, 1879.

By Mr. BLISS:

Q. What schedule of time was used at that time?—A. Fifteen hours.

Q. Was it made in fifteen hours?—A. That summer we made it in fifteen hours.

Q. How was it in winter?—A. Generally behind time.

Q. Why?—A. On account of snows at each end of the route; and then the time for mountain roads was too fast.

Q. What sort of a road was it?—A. At that time it was a very rough road. There was a toll road through the Animas canyon just building, and each end the snow in the winter time obstructed the travel so that we would have to go on snow shoes or dog sleds from Silverton ten miles out—that part on dog sleds and from the other end with snow shoes.

By the COURT:

Q. What do you call the other end?—A. From Parrott City.

Q. From Parrott City to Animas City?—A. No; from Parrott City to what we call Brown's Ranch; about four or six miles from Parrott City.

Q. You had to run with snow shoes?—A. That next winter after 1879.

By Mr. BLISS:

Q. Was there any time when the schedule of time made was shorter than fifteen hours?—A. I do not know as to that.

By the COURT:

Q. I do not know whether I heard you. How long were you on that

route?—A. I say I ran that route from the 1st of July until the 1st of October.

By Mr. INGERSOLL :

Q. In what year?—A. Eighteen hundred and seventy-nine.

By Mr. BLISS :

Q. Then, when did you go into the post-office?—A. I went into the post-office, I think, on the 3d of February, 1881.

Q. What did you do in the mean time?—A. I was in the mines.

Q. In going from Silverton to Parrott City do you necessarily pass by Animas City?—A. Yes, sir; necessarily.

Q. Is there any way of going from Hermosa or that vicinity over to Parrott City?—A. Yes, sir; there is a trail going over there.

Q. When you were running this route, did they go by Animas City?—A. Always. When I commenced on the route there they always ran that way, and had before that.

By the COURT :

Q. What is the length of the route?—A. I think it is sixty-five miles.

Q. From Parrott City to Silverton?—A. From Parrott City to Silverton. We call it sixteen, twelve, sixteen, and twenty.

Mr. WILSON. It is advertised as sixty-nine miles.

By Mr. BLISS :

Q. It is twelve miles to Bowen's?—A. Sixteen miles to Bowen's, twelve to Carson's, sixteen to Animas City, and twenty to Parrott City.

Q. What time did you leave Silverton in the morning?—A. Five o'clock in the morning.

Q. What time did the mail get back there in the evening?—A. The schedule time was 8 o'clock.

Q. In the evening?—A. Eight o'clock in the evening.

Q. Do you know at what time the mails left Silverton to go east to Antelope?

The WITNESS. To Antelope Springs?

Mr. BLISS. Yes.

A. They left at the same time I did from the post-office, for when I would go there after my mail the other carrier and I generally always met there.

Q. In the morning?—A. In the morning.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. They were running this route seven trips a week when you first commenced carrying?—A. Yes, sir.

Q. In July, 1879?—A. Yes, sir; July, 1879.

Q. You started on schedule time, did you?—A. Yes, sir.

Q. And went through on schedule time?—A. Yes, sir.

Q. Then you started back on schedule time and got to Silverton on schedule time, Silverton being the head of the route?—A. Yes, sir.

Q. You started on schedule time from both ends?—A. Yes, sir; we started about 5 o'clock in the morning and got there sometimes earlier than 8 o'clock and sometimes fully 8 o'clock, probably; but that summer we were mostly on time.

Q. Generally you went through on schedule time?—A. Yes, sir.

Q. Except in the winter when the roads were blockaded with snow ?
—A. I did not carry it in the winter.

Q. You then became connected with the post-office ?—A. No ; not until 1881.

Q. Then you know nothing about it excepting during the summer ?
—A. Only by seeing the carriers ; that is all.

Q. Did you go all the way through yourself when you were carrying ?
—A. No, sir.

Q. How far did you go ?—A. I went to one of the stations each time ?

Q. How many stations did they have ?—A. Four.

Q. How do you know that if you did not go over the road ?—A. I have been from the end but I did not continuously carry it to the end. I did not start from Silverton in the morning and reach Parrott City that night.

Q. In other words you carried it part of the time in one section or division in this route and part of the time another ?—A. Yes, sir.

Q. And in that way you came to know how many sections or divisions there were ?—A. Yes, sir.

Q. How many did you say there were ?—A. Four.

Q. And how many carriers ?—A. Four carriers.

Q. They had a carrier for each division ?—A. Yes, sir.

Q. The entire route was sixty-nine miles ?—A. Sixty-five miles, I think it was.

Mr. WILSON. It was advertised as sixty-nine, but I suppose you are quite as accurate as the advertisement.

Q. How many horses did you say you had ?—A. We had three horses apiece, with the exception that when they would change a horse sometimes we would have four horses ; but not all the time.

Q. Did you carry it on horseback ?—A. We carried it on horseback. Occasionally there would be a buggy—a spring wagon run out.

Q. Did you use three horses at one time to carry the mail through there ?—A. Yes, sir.

Q. Did you ride one and lead two ?—A. When I started from Silverton with two horses I would ride one to Bowen's and take the one that was left at Bowen's back ; and consequently I left two horses at Silverton and one at Bowen's.

Q. How many horses staid at Bowen's ?—A. I had one horse at Bowen's, and two horses at Silverton when I was on the upper run.

Q. And you rode how many miles ?—A. Sixteen miles ; it was over that.

Q. And you used three horses on the sixteen miles ?—A. Three horses.

Q. The next station was how far ?—A. Twelve or thirteen miles.

Q. And they used how many horses on that run ?—A. Three horses on that.

Q. To carry that mail twelve miles ?—A. Yes, sir.

Q. Then the next station was how far ?—A. Sixteen miles.

Q. And how many horses on that run ?—A. The same number. Each driver had three horses.

Q. All the way through ?—A. Yes, sir.

Q. Making twelve horses used on this route ?—A. Yes, sir.

Q. And four drivers ?—A. Twelve horses and four drivers.

Q. Did you use those twelve horses all the time ?—A. Well, with the exception when we changed, as I was telling you. I would take one horse from Silverton and start down to Bowen's, and ride one down

to Bowen's, and there would be two at Bowen's, and I would take the other one back to Silverton that night.

Q. What would you do with the other one next morning?

The WITNESS. At Bowen's?

Mr. WILSON. No; at Silverton.

A. It would be at Silverton, and I would turn the next morning and go with the other horse.

Q. You changed off a horse every day?—A. Yes, sir.

Q. And kept two horses resting all the time?—A. Yes, sir; drove one horse, and had one horse at each end while we were making a trip.

Q. You did not lead a horse; you carried the mail on horseback?—A. Yes, sir.

Q. So you had two extra horses?—A. Yes, sir; but they were in the service.

Q. Are you pretty familiar with this country down there?—A. I have been there since 1876.

Q. I wish you would state to the jury if you know this route, 38145, the Ojo Caliente route.—A. All I know is at the Animas City end of it. The connecting driver stopped in our stables; that is all.

Q. That route is the outlet for the Silverton mail, is it not?

The WITNESS. The outlet for the Silverton mail east?

Mr. WILSON. Yes.

A. Oh, no.

Q. For the Silverton mail going into this country below here, to Parrott City.—A. 38156 is the route from Silverton.

Q. That is the route from Silverton over to Parrott City?—A. At that summer the southern mail came over that route.

Q. How was that route to Parrott City at that time for a winter route?—A. I say they carried it there, but never could make it on time; very seldom; never did, I guess, in the winter time.

Q. It is difficult to do it on time on account of the condition of the mountains and country?—A. And the snow.

Q. How near is the railroad to Silverton now?

The WITNESS. When I left?

Mr. WILSON. Yes.

A. When I left Silverton it was four miles above Rockwood.

Q. Which road are you talking about; the one running by way of Chama up to Silverton?—A. Yes, sir.

Mr. BLISS. From where?

Mr. WILSON. That section of the Denver and Rio Grande Road running across to Chama, and by way of Durango up to Silverton.

Mr. BLISS. Oh, yes.

Q. How far is that road now constructed towards Silverton?—A. When I let it was about twenty-six or twenty-eight miles.

Q. From Silverton?—A. From Silverton.

Q. Where are the San Juan mines?—A. The country of the San Juan proper is San Juan, Ouray, Dolores, La Plata, and Hinsdale Counties.

Q. This route that you traveled over from Silverton to Parrott ran right through what is known as the San Juan mining regions?—A. It was then what was called the San Juan country.

Q. Isn't there a place there called the San Juan Mines?—A. Yes, sir.

Q. And it goes right through there, does it not?—A. Yes, sir.

Q. When was the railroad completed to Durango?—A. About the 1st of August, 1881.

Q. Do you know when the road was completed to Antelope Springs and Alamosa?—A. I do not.

Q. Have you been up there?—A. I was there before the railroad was built.

Q. How large a place is Durango?—A. About four thousand inhabitants.

Q. How large a place is Silverton?—A. Probably one-third as large as Durango.

Q. Where is Fort Lewis?—A. Fort Lewis is twelve miles west of Durango.

Q. Durango is close to Animas City, is it not?—A. Yes, sir.

Q. How far is it from Animas City?—A. A little over a mile.

Q. In what direction?—A. South.

Q. Right south of Animas City?—A. Yes, sir.

Q. How large a place is Fort Lewis?—A. I have never been to Fort Lewis, sir.

Q. Do you know where Fort Lewis is?—A. Yes, sir.

Q. Whereabouts is it?—A. I know where the location of it is, but I have never been there since it was established.

Q. Where is the location?—A. The location is on the La Plata, two and a half or three miles south of where our road starts up to Parrott City.

Q. How far west of Animas City is it?—A. About twelve or thirteen miles. It is called twelve miles.

Q. It is on this route from Silverton to Parrott, is it not?—A. It is now.

Q. It has been established since you carried mail there?—A. Yes, sir.

Q. Right on the line of this route?—A. The mail runs to Fort Lewis now.

Q. How far is it from Antelope Springs to Silverton?—A. I estimate it over forty miles.

Q. Do you know what kind of a road it is in winter from Antelope Springs to Silverton?—A. I have never crossed over it in the winter time, but it is above timber line, crossing over the Continental Divide.

Q. Can that mail be carried in the winter with any certainty on that route?

Mr. BLISS. I am not going to object, but the witness says he has never been over it in the winter.

Mr. WILSON. And he says it is above timber line.

Mr. BLISS. You can draw your own inference.

By Mr. BLISS:

Q. Did you have anything to do with the route while the time from Silverton to Animas was thirty-six hours?—A. I was living at Lamb's ranch, four miles above Animas City, then.

Q. But you had nothing to do with it?

By Mr. WILSON:

Q. I suppose you drivers took care of the stock when you stopped at the station over night?—A. We always took care of the stock.

GEORGE M. SWEENEY recalled and examined.

By Mr. BLISS:

Question. [Submitting paper to witness.] Look at the paper marked 1879, May 6th, and see if you know in whose handwriting that indorsement is?—Answer. [After examining the same.] Byron C. Coon.

Q. [Submitting another paper to witness.] Paper marked January 26, 1878 ?—A. [After examining the same.] William H. Turner's.

Q. [Submitting another paper to the witness.] Paper marked 1878, October 31 ?—A. [After examining the same.] Byron C. Coon's.

Q. [Submitting another paper to the witness.] Jacket marked January 23, 1879 ?—A. [After examining the same.] The caption and body of the order are in the handwriting of William H. Turner. The signature is by John L. French.

Q. [Submitting another paper to the witness.] Paper marked 1879, June 16 ?—A. [After examining the same.] It is indorsed by Byron C. Coon.

Q. [Submitting another paper to the witness.] Jacket marked 1879, March 17 ?—A. [After examining the same.] The caption and the body of the order are by Byron C. Coon, and the signature by General Brady.

Q. [Submitting another paper to the witness.] In that jacket, a paper ?—A. [After examining the same.] It is indorsed by Byron C. Coon.

Q. [Submitting another paper to the witness.] Here is a jacket marked 1879, March 17 ?—A. [After examining the same.] The caption and body of the order are by Byron C. Coon. The signature is by General Brady.

Q. [Submitting another paper to the witness.] Jacket marked February 16, 1881 ?—A. [After examining the same.] The writing is in the hand of William H. Turner.

Q. [Submitting another paper to witness.] Jacket marked April 17, 1880 ?—A. [After examining the same.] The caption and body of the order were written by William H. Turner, and the signature by John L. French.

Q. [Submitting another paper to the witness.] Jacket marked December 8, 1880 ?—A. [After examining the same.] The caption and body of the order were written by William H. Turner, and the signature by John L. French.

Q. [Submitting another paper to witness.] Paper marked April 25, 1879 ?—A. [After examining the same.] It is indorsed by William H. Turner.

Q. [Submitting another paper to the witness.] Jacket marked June 12, 1879 ?—A. [After examining the same.] The caption and body of the order were written by William H. Turner, and the signature by John L. French. The "Do this" was done by General Brady.

Q. [Submitting another paper to the witness.] Paper marked May 6, 1879 ?—A. [After examining same.] It is indorsed by Byron C. Coon.

Q. [Submitting another paper to the witness.] Another paper marked May 6, 1879 ?—A. [After examining the same.] It is indorsed by Byron C. Coon.

Q. [Submitting another paper to the witness.] A paper marked April 30, 1879 ?—A. [After examining the same.] It is indorsed by William H. Turner.

Q. [Submitting another paper to the witness.] Paper marked April 23, 1879 ?—A. [After examining the same.] It is indorsed by Byron C. Coon.

Q. [Submitting another paper to the witness.] Three sheets of figures ?—A. [After examining the same.] I think these figures were made by W. H. Turner.

Q. [Submitting another paper to the witness.] An undated jacket ?—A. [After examining the same.] The writing on this was done by Byron C. Coon.

Q. [Submitting another paper to the witness.] Paper marked November 19, 1880?—A. [After examining the same.] Indorsed by Byron C. Coon.

Q. [Submitting another paper to the witness.] Paper marked November 24, 1880?—A. [After examining the same.] Indorsed by William H. Turner.

Q. [Submitting another paper to the witness.] Paper marked November 11, 1880?—A. [After examining the same.] It is indorsed by William H. Turner.

Q. [Submitting another paper to the witness.] Another paper marked November 11, 1880?—A. [After examining the same.] Indorsed by William H. Turner.

Q. [Submitting another paper to the witness.] Paper marked November 25, 1879?—A. [After examining the same.] Indorsed by William H. Turner.

Q. [Submitting another paper to the witness.] Jacket marked October 1, 1878?—A. [After examining the same.] The caption of the order and the blanks are filled in by William H. Turner. The signature is by General Brady.

Q. [Submitting another paper to witness.] And the paper in that?—A. [After examining the same.] I do not know by whom.

Q. [Submitting another paper to the witness.] Paper marked November 13, 1879?—A. [After examining the same.] Indorsed by William H. Turner.

Q. [Submitting another paper to the witness.] Paper marked November 28, 1879?—A. [After examining the same.] Indorsed by Byron C. Coon.

Q. [Submitting another paper to the witness.] A schedule marked January 21, 1880?—A. [After examining the same.] It is not a schedule.

Q. I meant a jacket?—A. The red ink writing and body of the order are in the handwriting of William H. Turner. The signature is by General Brady.

Q. [Submitting another paper to witness.] In that jacket a paper marked 1880, January 16?—A. [After examining the same.] Indorsed by Byron C. Coon.

Q. [Submitting another paper to witness.] Jacket marked November 11, 1879?—A. [After examining the same.] The caption of the order and the blanks were filled in by William H. Turner. The signature is by John L. French.

Q. [Submitting another paper to the witness.] Jacket marked January 21, 1880?—A. [After examining the same.] The caption of the order and the blanks were filled in by William H. Turner and the signature by General Brady.

Q. [Submitting another paper to the witness.] An unindorsed paper in this jacket. What is the stamp upon it?—A. [After examining the same.] "Office of the Second Assistant Postmaster-General."

Q. You recognize these papers as having been in your possession?—A. I do not recognize any specific paper. They are, however, parts of the files of route 38156.

Q. The files of that route were in your charge?—A. Yes, sir.

Q. Have you parted with them to anybody; delivered them to anybody; if so, to whom?—A. They were delivered over to Inspector Woodward, or to some person at his request.

Q. When?—A. I think it was the 7th of September, 1881.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. Do you know whether these are all the papers that were from the files ?—A. I do not.

Q. There might have been a great many more than these ?—have no knowledge now. I know of no reason why any have taken. I have no reason to think any have been taken from the

Q. It might be that papers that were in those files with no upon them might be removed and you would have no means of finding it ?—A. Yes, sir.

Q. [Submitting a paper to witness.] Now, look at the indorsement on that jacket. I do not want you to read it, but I simply want you get me out of these papers the papers that are mentioned on jacket ?—A. In the first place this jacket states "Numerous communications." It does not designate the number. It says that Hon. J Pitkin—

Q. [Interposing.] You need not read it to me. I simply want you look at that and then pick out and hand to me the papers that are indorsed on that jacket.

Mr. BLISS. There is a paper from that jacket which I produced the other route which I told you I had found in a different route. Those names were enumerated on the other petition which I took for your benefit.

Mr. WILSON. There is no catch about this. I simply want you take them out and identify them. That is all.

Mr. BLISS. Those six or eight names are all specified in the petition.

Mr. WILSON. I simply want them in, in this case.

Mr. BLISS. They are in, in 38145.

Mr. WILSON. I want them in on this. I simply want all the papers that belong to this file in this file.

Mr. BLISS. They are not in, because I told you I took one out.

Mr. WILSON. If you took one out let us have it back.

The COURT. How did this jacket come to be separated from the papers that were contained in it. How does this jacket remain in the papers in this case and the contents of the jacket—

Mr. BLISS. [Interposing.] The point is this, your honor. You remember that when I got nearly to the close of route 38145, day before yesterday, I called Mr. Wilson's attention to the fact that I had found a jacket on another route, 38156, which related to 38145, and I took that jacket from 38156 and handed it to Mr. Wilson because it was a matter of confusion making rather on their side of the case. It was a jacket indorsed referring to both routes.

The COURT. That was one paper.

Mr. BLISS. That was the only one, sir.

A. I have five papers here, two of which I recognize as belonging to that jacket by the jacket itself. The other three I have no doubt belong to the jacket, from their subject-matter.

By Mr. WILSON :

Q. [Resuming.] Those are all you find ?—A. All I find.

Mr. WILSON. Colonel Bliss, have you that other paper now ?

Mr. BLISS. I was looking to see if I could find the number. I could refer to it. Here it is, marked 89 E. [Submitting same to Mr. Wilson.]

By Mr. WILSON:

Q. [Resuming.] Now, this jacket says "Numerous communications inclosed." How many do you say you found there?—A. I have five here and the one that you just handed me makes six.

Q. The sixth one is specifically referred to on this jacket. Of the five that you have there, there are three that have no mark upon them, and you are only able to say that they belong to this jacket by reason of the subject matter. Now, I will ask you to state if there might not have been three dozen more just like it.—A. There might have been more; yes, sir.

Q. And you would not be able to detect it from anything you have here now?—A. No, sir.

By Mr. BLISS:

Q. Please tell me if there could have been three dozen more papers got into that jacket?—A. I did not say three dozen more. I said there might have been more.

Q. Could there have been three dozen more got into that?—A. No, sir.

By Mr. WILSON:

Q. That was only figuratively. I will say three more. Could three more have been got into that jacket?

The WITNESS. Three more than there are there now?

Mr. WILSON. Yes.

A. Yes, sir.

Mr. BLISS. There could not have been many more got into that jacket. To save taking Mr. Sweeny from his work again, I show him some more papers that we shall want——

Mr. WILSON. [Interposing.] I wish you wouldn't mix these things up.

Mr. BLISS. I can identify papers.

By Mr. BLISS:

Q. [Submitting a paper to witness.] I present you the jacket headed June 24, 1879, on route 46132, Julian to Colton, and ask you if you know in whose handwriting that paper is?—A. [After examining the same.] The writing in red ink was done by Byron C. Coon; that in black ink in the body of the order was done by William H. Turner; the signature was written by General Brady, as also "Do this—Brady," in blue pencil.

Q. [Submitting another paper to the witness.] In the same jacket a paper marked 1879, April 11?—A. [After examining the same.] This was indorsed by Byron C. Coon.

Q. [Submitting another paper to witness.] Paper in the same jacket, dated 1879, April 11?—A. [After examining the same.] This was indorsed by Byron C. Coon.

Q. [Submitting another paper to the witness.] Paper in the same jacket, dated 1879, January 29?—A. [After examining the same.] This was indorsed by Byron C. Coon.

Q. Look at the stamp outside?—A. It is that of the contract office of the Post-Office Department.

Q. [Submitting another paper to witness.] Paper dated 1879, January 29?—A. [After examining the same.] It was indorsed by Byron C. Coon, and has the stamp of the contract office of the Post-Office Department.

Q. [Submitting another paper to witness.] Paper dated December

19, 1878 ?—A. [After examining the same.] It is William H. Turner indorsement.

Q. [Submitting another paper to the witness.] Paper indorsed February 12, 1878 ?—A. [After examining the same.] Indorsed by William H. Turner, and it bears the stamp of the contract office.

Q. [Submitting another paper to the witness.] A paper dated 1879 April 11 ?—A. [After examining the same.] Indorsed by Byron C. Coon and has the stamp of the contract office.

Q. [Submitting another paper to the witness.] A paper dated 1879 April 11 ?—A. [After examining the same.] Indorsed by Byron C. Coon.

Q. [Submitting other papers to witness.] Some figuring ?—A. [After examining the same.] The papers were evidently made by William H. Turner, and the indorsement is by Byron C. Coon.

Q. [Submitting another paper to the witness.] Paper dated 1879 April 11 ?—A. [After examining the same.] Indorsed by Byron C. Coon.

Q. [Submitting another paper to the witness.] Jacket dated May 24 1879 ?—A. [After examining the same.] The caption of the order and the blank spaces were filled in by William H. Turner. The signature is by General Brady.

Q. [Submitting another paper to the witness.] Jacket dated December 12, 1878 ?—A. [After examining the same.] The caption and the body of the order were written by William H. Turner, and the signature by General Brady.

Mr. BLISS. [To Mr. Wilson.] These papers have been identified. Do you want them marked for identification ?

Mr. WILSON. That is, the papers in 46132 ?

Mr. BLISS. Yes, sir.

Mr. WILSON. Oh, no ; go ahead.

Mr. BLISS. [To the witness.] That is all we desire to ask you.

Mr. BLISS. I offer in evidence a letter dated Animas City, La Plata County, Colorado, January 14, 1878.

Mr. WILSON. You are going back now.

Mr. BLISS. I am going back now to route 38156 :

ANIMAS CITY, LA PLATA COUNTY, COLORADO,
January 14th, 1878.

SECOND ASSISTANT P. M. GENERAL,

Washington, D. C. :

The advertisement on November, 1877, inviting proposals for carrying the mails of the United States is received.

In my official capacity as postmaster, I respectfully ask to make the following representations to you in regard to the service on route 38156, from Silverton to Parrott City Colorado, viz. : Animas City should be placed upon said route without any additional pay from the P. O. D., for the following reasons :

1st. During at least eight months of the year the carrier cannot avoid passing through Animas City without incurring much additional expense, as the trail from Hermosa to Parrott, which the carriers (for the purpose of obtaining additional compensation, if required to go any other way), are pleased to consider a part of the route, passes over the rough spurs close to the foot of the La Plata Mountains, and in the rainy season is very slippery and dangerous, and during the snow season can be traveled only on snow shoes at great risk of life.

Neither mail carriers or other persons ever travel that trail except in dry weather, but pass down the valley through Animas City, skirting along the edge of the spurs before referred to.

The wagon road between this and Silverton is nearly completed [wagons loaded are passing over it now], and the contractor expects to run a coach between this place and Silverton by the first of May. All his passenger and express traffic will come to this place and he cannot avoid this post-office without being to considerable expense. I

would therefore respectfully request that Animas City be made a point on route 38156 in the new contract.

Respectfully,

JOHN M. TREW.

[The paper just read was submitted to the clerk to be marked, and was by him marked 1 F.]

The next is a distance circular apparently sent from the Post-Office Department:

[Distance circular.]

U. S. POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, June 14th, 1878.

SIR: To preserve accuracy in the route books of the department the Postmaster-General requests the insertion in the columns below of the official names of the post-offices on Colorado route number 38156, between Silverton and Parrott City, to be written in the order in which they are situated, with the distance from one office to another.

Each postmaster will give the distance of his office from the post-office immediately preceding, certifying the same by his signature. Fulfill this duty promptly, and return the paper without delay to this office.

Respectfully, &c.,

THOMAS J. BRADY,
Second Assistant Postmaster-General.

Mr. JOHN W. DORSEY,
Contractor, Middlebury, Addison, Vt.

From—	To—	Miles.	Postmasters' signatures.
Distance from Silverton	To Rockwood.....	33 miles.....	M. E. Copeland.
Distance from Rockwood.....	To Hermosa.	6 miles.....	George B. Warner.
Distance from Hermosa.....	To Animas City.....	8½ miles.....	A. N. Fuller.
Distance from Animas City	To Parrott City.....	18 miles.....	John M. Trew.

[The paper just read by counsel was submitted to the clerk to be marked for identification, and was by him marked 2 F.]

The next paper is a jacket, and is as follows:

Date, January 23rd, 1879. State, Colorado.

Number of route 38156.

Termini of route, Silverton and Parrott City.

Length of route, 69 miles.

Number of trips per week, two.

Contractor, John W. Dorsey.

Pay, \$1,488 per annum,

Service on route No 38145 has been curtailed so as to end at Animas City, decreasing the distance 18 miles. Animas City can be embraced on this route by increasing the distance ten miles, which change would give the office at Animas City twice instead of once a week supply as at present.

That is in red ink. Then comes the black ink:

1st. Embrace Animas City next after Hermosa, increasing the distance ten miles, and allow contractor \$215.65 per annum additional pay, being pro rata, from February 16, 1879.

Second. Allow subcontractor \$330.43 per annum additional pay, being pro rata.

FRENCH.

[The paper just read by counsel was submitted to the clerk to be marked, and was him marked 3 F.]

The next is a jacket, and is as follows:

Date, 1879, March 17th. State, Colo.

Number of route, 38156.

Termini of route, Silverton and Parrott City.

Length of route, 65½.

Number of trips per week, two.

Contractor, J. W. Dorsey.

Pay, \$1,703.65.

Schedule desired as below :—

That is in red ink. Now in black—

L. Silverton Tues. and Wed. at 7 a. m.

A. Parrott next days by 8 p. m.

L. Parrott Tues. and Frid. at 7 a. m.

A. Silverton next days by ten p. m.

Change as above.

BRADY.

[The jacket just read was submitted to the clerk to be marked, and was by him marked 4 F.]

Inside of that jacket is a circular from the Post-Office Department:

U. S. POST-OFFICE DEPARTMENT, CONTRACT OFFICE,
Washington, January 23rd, 1879.

SIR: A change of schedule is desired on mail route No. 38156, on which John W. Dorsey is the contractor, because Animas City has been embraced. The service is twice a week.

Be careful to allow no more than 46 hours running time each way.

Respectfully,

J. L. FRENCH,
Acting Second Assistant Postmaster-General.

P. M., Silverton, San Juan Co., Colorado.

That bears the stamped signature of J. L. French.

SCHEDULE.

The undersigned postmasters and contractors recommend the following departures and arrivals on mail route No. 38156, State of Colorado:

Leave Silverton Tuesdays and Fridays 7 a. m.

Arrive at Parrott by next day 8 p. m.

Leave Parrott City Tuesday and Fridays 7 a. m.

Arrive at Silverton next day 10 p. m.

MATT E. COPELAND,
P. M. at Silverton, Colo.
F. G. HAGAN,
P. M. at Parrott City, Colo.
W. E. EARL,
Contractor, Silverton Colo.

Dated February 17th, 1879.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 5 F.]

The next is a paper, which is indorsed as follows:

1879, May 6th.

38156. Colo.

Sworn statement of John W. Dorsey as to number of men and animals required to perform the service under increased service and expedition.

The paper is as follows :

Hon. THOS. J. BRADY,
Second Assist. P. M. General :

SIR: The number of men and animals necessary to carry the mails on route 38156 on the present schedule seven times a week is three men and ten animals. The number necessary on a schedule of fifteen hours seven times a week is six men and thirty animals.

Respectfully,

JOHN W. DORSEY.

STATE OF VERMONT,
County of Addison :

John W. Dorsey, being duly sworn, deposes and says that the above statement is true as he verily believes.

Sworn to and subscribed before me this 21st day of April, 1879.

RUFUS WAINWRIGHT,
Clerk of the Addison County Court.

[The paper just read was submitted to the clerk to be marked, and was by him marked 6 F.]

The next paper is a letter, and is as follows:

WASHINGTON, D. C., *May 5, 1879.*

Hon. THOS. J. BRADY,
Second Assist. P. M. General:

SIR: I have the honor to transmit herewith my proposition for carrying the mail on route 38156, Silverton to Parrott City, Colorado, on an expedited schedule.

Hoping this will meet with your favorable consideration,
I am, very respectfully,

J. W. DORSEY.

[The paper just read was submitted to the clerk to be marked, and was by him marked 7 F.]

Mr. WILSON. Where is the proposition accompanying that?

Mr. BLISS. That and the oath came together. That is all that I know of it. That is all you will find in every case. There are no other papers in the case of J. W. Dorsey.

Mr. WILSON. You know they submit the proposition.

Mr. BLISS. Some of them do. All I can say is, that we have no other papers than those.

Mr. WILSON. Pardon me; that paper you have read to the jury is not properly the proposition.

Mr. BLISS. All I have to say is, that I am putting in all the papers I have. If you can find any more, get them, and I will assist you.

The COURT. The oath states how many men and animals are used on expedition and increase of service. There was no expedition proposed on that oath. The number of men and animals mentioned there is for service seven times a week.

Mr. BLISS. But not for the short schedule, sir. They reduce from thirty-seven hours to fifteen hours, as I am just about to read to you, sir:

Date, June 12th, 1879. State, Colorado.

Number of route, 38156.

Termini of route, Silverton and Parrott City.

Length of route, 65½ miles.

Number of trips per week, two.

Contractor, John W. Dorsey.

Pay, \$1,703.65 per annum.

Numerous communications inclosed asking for five weekly trips and expedition of schedule.

Hon. F. W. Pitkin, governor of Colorado; Hon. N. H. Meldrum, secretary of state; J. C. Shattuck, sup't public instruction; Hon. Henry C. Thatcher, chief justice; Hon. C. F. Stone, associate justice; Hon. H. M. Teller, U. S. S.; Hon. James B. Belford, M., and Hon. J. B. Chaffee, join in urging daily service and expedition of schedule.

There are five offices that would be benefited by the improved service recommended. Contractor submits sworn statement relative to number of men and horses required in present and proposed schedule.

Present schedule, 37 hours.

Proposed " 15 "

Increase 5 trips, \$4,259.12 per annum.

Expedition, 10,549.51 " "

Total increase, \$14,808.63 " "

That is all in red ink. Now, in black:

1st. Increase service five trips per week from July 1st, 1879, and allow contractor \$4,259.12 per annum additional pay, being pro rata.

2nd. Reduce running time from 37 hours to 15 hours from July 1st, 1879, and allow contractor \$10,549.51 per annum additional pay, being pro rata.

FRENCH.

[The jacket just read was submitted to the clerk to be marked, and was by him marked 8 F.]

ANDREW W. GILL, *Pres't.*

J. S. LOCKWOOD, *Secretar*

OFFICE OF THE LEADVILLE MINING COMPANY, 57 BROADWAY,
New York, April 24th, 1879.

Hon. T. J. BRADY,
Second Assist. P. M. General :

DEAR SIR: Being one who, with his friends, have largely interested themselves in the mining interests of Colorado, I most respectfully urge upon you the importance of increased mail facilities from Silverton to Parrott City, and that the same be increased by making a *daily* and *fast* line between these two points. The population around and between these two points is rapidly increasing, and will continue to do so for the coming year.

By increasing the mail service as suggested you will confer a great favor on the people now there, as it will upon the many thousands yet to be there the present season.

Very respectfully, yours,

A. McDONALD.

[The paper just read was submitted to the clerk to be marked, and was by him marked 9 F.]

The COURT. Is McDonald referred to in the indorsement on the jacket?

Mr. BLISS. No, sir; he is not referred to on the jacket.

Mr. WILSON. The indorsement says "numerous communications."

The COURT. Yes; but it names several.

Mr. BLISS. It names officials. It does not name persons who are not officials.

WASHINGTON, D. C., May 5, 1879.

Hon. D. M. KEY,
P. M. General :

SIR: I have the honor to transmit herewith letter from the State officers of Colorado asking that the service on mail route from Silverton to Parrott City be increased to daily, and on faster time.

This request is reasonable, and the order should be at once made to that effect, and I hope you will grant the request.

Very respectfully,

JAMES B. BELFORD.

[The paper last read was marked by the clerk 10 F.]

DENVER, COLORADO, April 28, 1879.

Hon. D. M. KEY,
Postmaster-General :

SIR: The undersigned, the State officers of Colorado, respectfully represent that the mining and agricultural interests of Southwestern Colorado are developing with extraordinary rapidity, and with this increasing immigration the necessity for better mail facilities is seriously felt.

We therefore have the honor to ask that the mail service from Silverton to Parrott City be increased to a daily line, and the route from Parrott City to Ojo Caliente, and Pagosa Springs, be increased to 3 trips a week, and we also ask that the time be made faster than it now is.

Hoping this will receive your early consideration, we have the honor to be,

FREDERICK W. PITKIN,

Governor of Colorado.

M. H. MELDRUM,

Secretary of State.

JOSEPH C. SHATTUCK,

Superintendent Public Inst.

ROBERT G. HOWELL,

Secretary State Board of Land Commiss.

HENRY C. THATCHER,

Chief Justice of Colorado.

WILLIAM F. STONE,

Associate Justice Sup. C.

This petition is indorsed :

This service is much needed, and I hope the petition of the petitioners will be granted.

H. M. TELLER.

[The paper last read had been previously marked by the clerk 89 E.]

CHICAGO, ILL., April 26, 1879.

Hon. D. M. KEY,

Postmaster-General, U. S. A. :

SIR: I have the honor to request that the mail service on the route from Silverton to Parrott City, Colorado, be made a daily service and fast time. The vast interests of this country and the unprecedented influx of people from all quarters of our country render speedy and frequent communication with the outer world imperative and of great benefit to citizens from all sections of the country, and moneys spent here cannot be said to accrue to the benefit of a section, but to our whole country.

Very respectfully, yours,

A. E. REYNOLDS.

[The letter last read was marked by the clerk 11 F.]

NEW YORK, April 23rd, 1879.

Hon. T. J. BRADY,

Second Assistant P. M. General, Washington, D. C. :

SIR: I have information that the people of Silverton, Parrott City, and Animas City have petitioned asking for daily mail service between the points named.

I urgently recommend that this be done with a fast schedule.

The people of this remote part of Colorado are entitled to some consideration.

Yours, truly,

J. B. CHAFFEE.

[The paper last read was marked by the clerk 12 F.]

In the same jacket are three sheets of figures which I do not read.

The COURT. Those petitions——

Mr. BLISS. [Interposing.] I read those for this reason. They do not any of them ask for any specific time. They ask a faster schedule and the faster schedule embraced in Mr. Dorsey's oath, all this which refers to the time which was finally granted. Then on the 12th of June the time is made which is in the indorsement of Dorsey's oath.

Mr. WILSON. Allow me to correct you. You said these petitions asked for fast time?

Mr. BLISS. I said faster.

Mr. WILSON. None of them ask for faster time except Mr. Dorsey's oath.

The next is a jacket, and is as follows:

Date April 17, 1880. State, Colorado.

No. of route, 38156.

Termini of route, Silverton and Parrott City.

Length of route 65 miles.

No. of trips per week, seven.

Contractor, J. W. Dorsey.

Pay, \$16,512 28.

Subcontractor, Frederick Steineger.

Pay, \$9,400.

Postmaster-General directs that the service on this route be reduced one trip per week.

So far in red ink. Now in black:

From May 1, 1880, reduce service one trip per week, decreasing contractor's pay \$2,358.89 per annum, being pro rata, and deduct from subcontractor \$1,342.86 per annum, being pro rata. Allow contractor and subcontractor one month's extra pay on service dispensed with.

FRENCH.

[The paper last read was marked by the clerk 13 F.]

The next is a jacket, and is as follows :

Date,——. State, Colorado.

No. of route, 38156.

Termini of route, Silverton and Parrott City.

Length of route, 79 miles.

No. of trips per week, six.

Contractor, John W. Dorsey.

Pay, \$14,153.39.

Subcontractor, Frederick Steineger.

Pay, \$8,057.14.

Present running time on route is 15 hours. Contractor represents that during the winter months it is impossible to perform service on this time on account of frequent snow slides and the great depth of snow over the route. He therefore requests an extension of running time in winter to 20 hours. Running time may be decreased five hours in summer and increased five hours during winter months.

[The paper last read was marked by the clerk 14 F.]

WASHINGTON, D. C., November 15, 1880.

Hon. THOMAS J. BRADY,

Second Assistant P. M. Gen. :

SIR: I have the honor to call your attention to a petition asking for an extension of schedule on route 38156, from Silverton to Parrott City, Col., during the winter months.

Our present schedule is 15 hours, and during the winter months, owing to the great depths of snow, as well as frequent snow-slides that occur on this route, it is not possible to perform the service within that length of time.

During the winter of 1878 and 1879, there were eighteen lives lost from snow-slides, crossing the San Juan Mountain, on the same road over which this service is carried.

I would, therefore, very respectfully ask that I be allowed a winter schedule of twenty-four hours.

Very respectfully,

J. W. DORSEY.

[The letter last read was marked by the clerk 15 F.]

PARROTT CITY, LA PLATA COUNTY, COLO,
November 12th, 1880.

Hon. THOMAS J. BRADY,

Second Assist. Postmaster-General :

SIR: The western portion of mail route No. 38156, from Silverton to Parrott, lies in a country which, during the winter, is usually blockaded by snow and the mail carriers are often obliged to traverse it upon snow shoes. On this, the Parrott end, the altitude is nearly 9,000 feet, the winter rigorous, and the trip dangerous. A mail carrier lost his life here last winter, and, in order to avoid the chances of such casualties, it is requested that the following be fixed as schedule time for above route :

Leave Silverton 10 a. m.

Arrive at Parrott 3 p. m. following day.

Leave Parrott 10 a. m.

Arrive at Silverton 10 a. m. following day.

Twenty-four hours has been made the winter time between Silverton and Parrott. The arrival of the mail at Parrott at 3 p. m. would simply be extending the time of the incoming mail. No connections would be missed and the mail carrier would traverse the most dangerous portion of the route during the middle of the day.

The extension of time is also made necessary by the establishment of a post-office at Fort Lewis, six (6) miles below Parrott, and the consequent delay of mail at the new office. The trip to Fort Lewis also extends the distance to be traveled about five miles.

Hoping, since no connections are missed, and no real delays are involved, that this schedule will meet early approval, we remain,

Very respectfully, yours,

FRED. STEINEGER,
Subcontractor.
W. R. WINTERS,
Postmaster, Parrott.

[The letter last read was marked by the clerk 16 F.]

The next paper is a letter, and is as follows :

[United States Senate Chamber.]

DENVER, COLORADO, November 8th, 1880.

HON. THOMAS J. BRADY,
Second Assist. P. M. General :

DEAR SIR : I enclose a petition of the citizens of Silverton to the effect that the time from Silverton to Parrott City on route 38156 may be extended from 15 to 24 hours from Nov. 15th till Apr. 15th.

This petition is signed by nearly every business man in Silverton, and by many in La Plata County. It is consistent with what many of them stated to me on the occasion of my recent visit to that part of the State. It is based upon the fact that it is nearly impossible to get the mail through when the snow is deep, and much of the time absolutely impossible to get it through in 15 hours.

Steiniger, the contractor, paid last winter for carrying the mail over 8 or 10 miles of the route on snow-shoes during portions of the time all that he received for the whole route.

All the people interested take a friendly interest in Steiniger on account of the efforts which he made to make his regular trips last winter, and would be pleased to have him favored with the allowance of more time without any reduction in the compensation. There is no doubt but that for a large portion of the time in winter it costs him more than he receives.

If the mail is sent from the end of the track of the D. and R. G. R'y, instead of from Antelope Springs, as I proposed in a recent letter, it is important to have a man like Steiniger who has the energy to push it through in spite of snow and storms.

In my opinion, the request contained in the enclosed paper is a reasonable one.

Very truly, yours,

N. P. HILL.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 17 F.]

The next paper is a petition, and is as follows :

SILVERTON, COLORADO, September 24th, 1880.

To the honorable HORACE MAYNARD,
Postmaster-General U. S. :

The undersigned, Fred. Steiniger, mail contractor from Silverton to Parrott City, in the State of Colorado, being mail route No. 38156, and citizens residing upon said mail route, respectfully request you to issue an order changing the schedule time from Silverton to Parrott City from 15 to 24 hours, from the 15th day of November until the 15th day of April of each year, until further orders, and that you fix the time of departure of the mail from Silverton at the hour of ten a. m., and from Parrott City at the hour of one p. m. In support of this petition we have the honor to respectfully represent that during the period above stated, owing to the rigor of our winters here, heavy snow storms, snow slides, snow drifts, and the mountainous character of the country, all experience shows that it is physically impossible for any contractor to carry the mails over said route on the present schedule time, or in less time than 24 hours. Much of the time carriers on the route can proceed only upon snow shoes. Hoping you will see the importance of these suggestions, we most earnestly and respectfully submit them to your consideration.

W. R. WINTERS, M. D.,
Assist. P. M. at Parrott.

JOHN M. TREW,
P. M., Animas City.

J. E. MOFFET,
Assist. P. M.

A. N. FULLER,
P. M., Hermosa, Colo.

C. A. TRIPP,
Assist. P. M.

THOMAS CHESTNUT,
P. M., Silverton, Colo.

MATT. E. COPELAND,
Late P. M. and County Clerk, Silverton, Colo.

And about three and a half pages of petitioners signed in columns. Mr. WILSON. Who was the postmaster at that time at Animas?

Mr. BLISS. The postmaster at that time was Mr. Trew, who was on the stand yesterday.

Mr. WILSON. Let us see this.

Mr. BLISS. Certainly. [Submitting papers.]

[The paper just read was submitted to the clerk to be marked, and was by him marked 18 F.]

The next paper is a jacket, and is as follows :

Date, February 16, 1881. State, Colo.

Route, 38156.

Termini of route, Silverton and Parrott City.

Length of route, 83 miles.

Number of trips per week, six.

Contractor, John W. Dorsey.

Pay, \$14,870.01 per annum.

Subcontractor, Frederick Steineger.

Pay, \$8,465.09 per annum.

Hon. N. P. Hill, U. S. S., personally recommends that the office of Durango be embraced on this route. Durango has a population of not less than two thousand, and increasing rapidly.

[The paper just read was submitted to the clerk to be marked, and was by him marked 19 F.]

The next is a jacket, and is as follows :

Date, October 1, 1878. State, Colo.

Number of route, 38156.

Termini of route, Silverton and Parrott City.

Length of route, 69 miles.

Number of trips per week, two.

Contractor, John W. Dorsey.

Pay, \$1,488 per annum.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of William E. Earl (whose post-office address is Silverton, Colorado) for service on this route, at \$2,280 per annum from July 1st, 1878, to June 30th, 1879, has been filed in this office.

BRADY.

[The jacket just read was submitted to the clerk to be marked, and was by him marked 20 F.]

The next paper is a subcontract, and is as follows :

Miner, Peck & Co.

Contract with subcontractor.

Whereas John W. Dorsey has been accepted according to law as contractor for transporting the United States mails on route No. 38156, from Silverton to Parrott City, State of Colorado, three times a week and back.

This indenture witnesseth, that on this 1st day of May, 1878, John W. Dorsey, the party of the first part and William E. Earl, together with F. M. Snowden and Charles Bayles, his sureties, making the party of the second part, have agreed as follows, to wit :

The said William E. Earl and his sureties, party of the second part, do jointly and severally undertake, covenant, agree, and do bind themselves to transport the U. S. mails on route 38156, from Silverton, by Niccora and Hermosa to Parrott City and back, twice a week, from the first day of July, 1878, to the thirtieth day of June, 1879, inclusive, in accordance with the advertised schedule time, and in full and complete compliance with the requirements of the Post-Office Department of the United States, and subject to all requirements and liabilities of the said contractor with the said Post-Office Department, for an annual sum as follows :

Two round trips per week, twenty-two hundred and eighty dollars.

It contains the provision for carrying the employés of Miner, Peck & Company, the provision for making report to Miner, Peck & Company, and the return or accounting for all orders to Miner, Peck & Company, and indorsed upon it, under the head of notice to subcontractors :

Please remember that subcontractors must account for all collection orders to Miner, Peck & Co., and also forward to them duplicates of the postmaster's reports of service. After reports and proper returns of collection orders are received by the department

and Miner, Peck & Co., subcontractors will be paid without waiting for any delays on the part of the Government.

Subcontractors only complicate and create delays by endeavoring to correspond with the Post-Office Department about any service which is being performed under a subcontract.

Mr. HENKLE. Who signs this?

Mr. BLISS. This contract is signed by John W. Dorsey, United States Government contractor, and William E. Earl, subcontractor.

[The paper just read was submitted to the clerk to be marked, and was by him marked 21 F.]

WASHINGTON, D. C., November 27th, 1879.

Hon. J. L. FRENCH,

Acting Second Assistant Postmaster-General:

SIR: Your favor of the 26th inst. informing us that the carriers will not perform service on route 38156, from Silverton to Parrott City, Colorado, after the 1st prox. is at hand.

In reply, we are just in receipt of statement from J. W. Dorsey, now at Silverton, saying he has already made provision for the continuance of this service.

Very respectfully,

M. C. RERDELL, *Agent.*
Per STEELE.

[The paper last read was marked by the clerk 22 F.]

The next is a jacket:

Date, November 11, 1879.

State, Colorado.

No. of route, 38156

Termini of route, Silverton and Parrott City.

Length of route, 79 miles.

No. of trips per week, 7.

Contractor, John W. Dorsey.

Pay, \$16,512.28 per annum.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of S. W. Dorsey (whose post-office address is Washington, D. C.), for service on this route, at \$16,512.28 per annum, from October 1st, 1879, to June 30, 1882, has been filed in this office, subject to fines and deductions.

FRENCH.

[The paper last read was marked by the clerk 23 F.]

In the jacket is the subcontract providing that whereas John W. Dorsey has been accepted according to law as contractor for transporting the United States mails on route 38156, from Silverton to Parrott City, twice a week and back, from July 1, 1878, to June 30, 1882: Now, this indenture witnesseth that, on this 1st day of April, 1879, John W. Dorsey, of the first part, and Stephen W. Dorsey, of the second part, have agreed as follows:

The said S. W. Dorsey, party of the second part, agrees to transport the United States mails on route 38156, two trips per week, from the 1st day of April, 1879, to the 30th day of June, 1882, inclusive, in accordance with the advertised schedule of time, and in full compliance with the requirements of the postal laws and regulations, for an annual sum of \$1,703.65.

It is agreed that the party of the second part shall receive one hundred per cent. of the compensation for increase of service.

It is agreed that all increases of whatever kind shall be paid to the subcontractor. The contract is signed by John W. Dorsey, United States Government contractor, and S. W. Dorsey, subcontractor, and witnessed by P. F. Chapman.

Mr. WILSON. Read the whole of it.

Mr. BLISS. I have read all that there was in writing.

Mr. WILSON. In other words the subcontractor gets the whole thing.

Mr. BLISS. It seems to be so.

The FOREMAN. [Mr. Dickson.] What is the date of the contract?

Mr. BLISS. It is dated the 1st of April, 1879.

Mr. TOTTEN. When was it filed?

Mr. BLISS. It is indorsed here November 11, 1879.

[The paper last read was marked by the clerk 24 F.]

The next is a jacket, as follows:

Date, January 21, 1880. State, Colorado.

No. of route, 38156. Termini of route, Silverton and Parrott City.

Length of route, 79 miles. No. of trips per week, 7.

Contractor, John W. Dorsey. Pay, \$16,512.28.

Subcontractor, S. W. Dorsey. Pay, \$16,512.28.

Contractor and subcontractor request the withdrawal of subcontract.

From January 1, 1880, stop all payment to subcontractor, contractor and subcontractor having asked for withdrawal of subcontract.

BRADY.

[The paper last read was marked by the clerk 25 F.]

WASHINGTON, D. C., January 7, 1880.

Hon. THOMAS J. BRADY,

2nd Assistant Postmaster-General:

SIR: We have to request that the subcontract of S. W. Dorsey, on route 38156, be withdrawn from the files of your department and that of Frederick Steineger be filed instead, to take effect from January 1st, 1880.

Respectfully,

JOHN W. DORSEY, *Contractor.*
S. W. DORSEY.

[The paper last read was marked by the clerk 26 F, and submitted to the jury for examination.]

The next is a jacket:

Date, January 21, 1880. State, Colorado.

No. of route, 38156. Termini of route, Silverton and Parrott City.

Length of route, 79 miles. No. of trips per week, 7.

Contractor, John W. Dorsey. Pay, \$16,512.28 per annum.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of Frederick Steineger, whose post-office address is Silverton, San Juan County, Colorado, for service on this route, at \$9,400 per annum, subject to fines and deductions, from January 1st, 1880, to June 30, 1882, has been filed in this office.

BRADY.

[The paper last read was marked by the clerk, 27 F.]

SILVERTON, SAN JUAN COUNTY, COLORADO, *December 2nd, 1879.*

THOMAS J. BRADY, Esq.,

2nd Assistant Postmaster General, Washington, D. C.:

SIR: Inclosed please find a mail contract between John W. Dorsey and Fred. Steineger on mail route number 38156 from the 25th day of November, 1879, to the 30th day of June, 1882. I wish to have this contract filed and draw the money from the Post-Office Department as provided by the U. S. postal laws.

I am, very respectfully, your obedient servant,

FRED. STEINEGER.
Silverton San Juan County Colorado.

[The paper last read was marked by the clerk 28 F.]

Inclosed is a contract between John W. Dorsey and Frederick Steineger, made on the 25th day of November, 1879, providing that Steineger shall carry the mail on route 38156, seven trips per week and return, from the 25th day of November, 1879, for \$9,400 per annum. It is agreed that the second party shall give ninety days' notice of any intention to discontinue the service, and that failure to give such notice

shall work a forfeiture of all pay that may be due to the said second party.

Mr. WILSON. When was that filed?

Mr. BLISS. It was filed on the 21st of January, 1880. It is signed by John W. Dorsey and Frederick Steineger, with John Murphy as surety, and the postmaster at Silverton appends a certificate dated the 25th day of November, 1879. On the back is the following:

I hereby guarantee, and my heirs and executors, that all payments due to the subcontractor under the provisions of the within contract shall be paid as therein provided.

S. W. DORSEY.

WASHINGTON, D. C., *November 24th*, 1879.

[The paper last read was marked by the clerk 29 F.]

Mr. WILSON. I think, if your honor please, that it is a good deal more expeditious to let these things go in without saying anything about them; but this increase and expedition was made on the 1st of July, 1879, and this subcontract was not made or filed until months afterwards.

The COURT. That is with Steineger.

Mr. WILSON. Yes; and the other subcontract covered the entire course of that service.

The COURT. Well, it might be argued from that that it tended to show that the real party was S. W. Dorsey.

Mr. WILSON. Oh, well, it does not bear date until the 1st of April, 1879—that part of it. As I say, it is probably cheaper and more economical in time to let it go; but it cannot throw the slightest light upon the action of General Brady, for the reason that it was not there until after——

The COURT. [Interposing.] They are making out, as I understand, an association and community of interest with other parties than Brady. This merely relates to other parties.

Mr. WILSON. Well, I suppose so. I am getting very economical of time, your honor.

The COURT. I am, too, but I do not see——

Mr. BLISS. [Interposing.] Mr. Wilson has got a new disease, I judge. It is the first evidence we have had of it.

Mr. WILSON. I think I have not occupied so much time as some other persons.

Mr. BLISS. You have not so much evidence to put in.

Mr. WILSON. I never will have either, from the indication.

Mr. BLISS. Perhaps not.

Mr. WILSON. I have not the slightest objection to any paper going in that was there at the time General Brady made any order that he made; in fact, I want them all; every one of them.

The COURT. Probably as to most of the papers the court cannot tell which are of any consequence and which are not; and the jury do not know. I really do not see the bearing.

Mr. INGERSOLL. If the court will allow me, so far as S. W. Dorsey is concerned, I want it to go in.

Mr. BLISS. It is in.

Mr. INGERSOLL. Because we made the statement that that route was assigned to us as security, and then when that security was established we let them have it back; and when we let John W. Dorsey have it back he sublet to Steineger. That is exactly in accordance with our statement, and if he had not introduced it I should.

CURT. Then it is saving time to go
WILSON. And we are happy all around.
BLISS. We have our view of its application, and we
in another way.

INGERSOLL. I shall never object as long as they are proving my
the case.

COURT. The same evidence, then, sustains the prosecution as
the defense.

BLISS. The next is the original contract between John W. Dor-
and the United States dated March 15, 1878, for service over this
twice a week for \$1,488 per annum. Signed by Mr. Dorsey and
Postmaster-General Key, and witnessed by A. E. Boone and John R.
per. The schedule is as follows:

Leave Silverton Tuesdays and Fridays at 6 a. m.
Arrive at Parrott City next days by 6 p. m.
Leave Parrott City Tuesdays and Fridays at 6 a. m.
Arrive at Silverton next days by 6 p. m.

It is sworn to by Dorsey before A. E. Boone on the 28th of March,
1878.

[The paper last read was marked by the clerk 30 F.]
The COURT. Do you claim, in regard to this particular route, that
the allowance of expedition was without cause?

Mr. BLISS. Yes, sir. Your honor will perceive that yesterday we had
a large number of petitions insisting upon expedition on route 38145,
because the Silverton route was impracticable and impassable, and,
therefore, the mails must go down by that route, and they must there-
fore have expedition. We now find that expedition was granted there,
and then expedition was granted here. We submit that in view of the
records of the Post-Office Department showing this condition of things,
that we have the right to argue, and there are also other facts from
which we shall argue, that the expedition was improperly ordered. We
submit that from those facts alone the action of Mr. Brady was not
justified. Your honor will perceive that subsequent to the time the
contractor himself comes in and says that the expedited time is im-
practicable in the winter.

The COURT. Yes; but there was a proportionate reduction in the
allowance.

Mr. BLISS. No, sir; there was no reduction. The point was this:
They were prompt to act upon recommendations of Senators and peti-
tioners when they asked to put on expedition and take money from the
Treasury, but when there was an application, as Senator Hill said, on
behalf of every resident and merchant at Silverton to lengthen the
schedule they did not do it, and there never was any order made upo
that at all. The schedule remained in that impracticable condition.

Mr. INGERSOLL. The court will remember that they asked to ha
that reduction made without change of pay.

Mr. BLISS. Oh, no.

Mr. WILSON. Oh, yes.

Mr. INGERSOLL. If it does not appear I will abandon the case. I
ask to have it done without change of pay. I recollect distinctly
reading a petition of that kind to-day.

Mr. BLISS. The petition does not say anything of that kind.
The petitioner says they would be glad to have it done without

request to have it without redu
was not made because

quest was that while the time should be reduced the pay should not be reduced.

The COURT. Whilst the time should be increased the pay should not be reduced.

Mr. INGERSOLL. There is another point. The gentleman said a moment ago that in the petitions that were read on yesterday or day before, or some time last week on this last route, the reason given was that the route from Silverton was impassable. Now, if that reason was given in the petitions I do not remember it. May be the court does; but I would like to have the gentleman show that petition which maintains it. The court will remember that Mr. Trew, the witness who seems so oddly named——

The COURT. [Interposing.] But he does not spell his name that way. [Laughter.]

Mr. INGERSOLL. [Continuing.] —stated that that road was excellent from Silverton over, and that all the mail ought to have been carried that way instead of by 38145. I have no doubt the man swore to what he thought was right, but the question is: Is there any petition that bases the application for expedition on route 38145 on the fact that the road from Antelope Springs to Silverton—or wherever it runs—is impassable. If there is let them show it. What earthly reason is there for the introduction of this testimony? Does it tend to show a conspiracy?

Mr. BLISS. It is all in. I do not know why it should be argued now.

The COURT. [To Mr. Ingersoll.] I understood you were anxious to have it in because it made out the defense.

Mr. INGERSOLL. The subcontract shows our case exactly.

The COURT. The other side are anxious to have it in because it makes out the prosecution.

Mr. INGERSOLL. But if the point Colonel Bliss is attempting to make is that route 38145 was expedited because route 38156 was impassable, and that they afterwards expedited 38156, I know of no such testimony. If he has it let him show it.

The COURT. He claims to have it.

Mr. BLISS. This petition from Silverton does not ask exactly for increase of time without reduction of pay. It does not say a word on that subject. No suggestion is made except in the letter of Senator Hill that it should be done without increase of pay. This petition does not say a word about it nor do any of the others.

Mr. WILSON. What petition have you?

Mr. BLISS. The petition that Senator Hill transmitted.

Mr. INGERSOLL. They proposed a reduction of time in the summer, and an increase in the winter.

The COURT. They propose that five hours additional shall be allowed in the winter, and taken off in the summer.

Mr. INGERSOLL. That was only done with the idea of keeping the pay the same.

Mr. BLISS. That is in a little petition signed by the subcontractor, and by the postmaster, at Parrott City. The petition which Senator Hill transmits, and says is signed by nearly every business man in Silverton, makes no suggestion of the kind. In transmitting that letter, he says:

I enclose a petition asking that the time be extended from 15 to 24 hours from November 15th to April 15th. This petition is signed by nearly every business man in Silverton, and by many in La Plata County. It is consistent with what many of them stated to me on the occasion of my recent visit to that part of the State. It is based

upon the fact that it is nearly impossible to get the mail through when the snow is deep, and much of the time absolutely impossible to get it through in 15 hours.

All the people interested take a friendly interest in Steineger on account of the efforts which he made to make his regular trips last winter, and would be pleased to have him favored with the allowance of more time, without any reduction in the compensation. There is no doubt but that for a large portion of the time in winter it costs him more than he received.

The COURT. That is his own suggestion.

Mr. BLISS. Yes; but the petition does not make any such suggestion at all.

The COURT. This evidence is all in.

Mr. WILSON. This is an application for a decrease in the summer, and an increase in the winter.

The COURT. No; I do not understand it that way. I understand it is a petition for an increase of time for the winter, and that increase of time is going to be taken off in the summer, so as to bring it back to fifteen hours.

Mr. BLISS. No, sir; there is nothing said about taking it off in the summer, except a single letter written by the subcontractor, and the postmaster at Parrott.

The COURT. That is just what I say; but I do not understand that they propose to take five hours off of the fifteen in the summer in order to compensate for the increased allowance in the winter. I merely understand that the summer time is to be the same as it was, fifteen hours.

Mr. BLISS. Yes, sir.

The COURT. And that the additional hours were for the winter months.

Mr. BLISS. Nine hours.

The COURT. And Senator Hill suggests that under the circumstances there ought to be no reduction of pay. There is nothing said on that subject in the petition.

Mr. INGERSOLL. Now, I understand it.

Mr. BLISS. I believe that is all the record evidence on this route. There may be one piece that I have mislaid. I will look after recess.

ALBERT CARSON sworn and examined.

By Mr. BLISS:

Question. Where do you live?—Answer. Rockwood.

Q. Colorado?—A. Yes, sir.

Q. That is north of Durango, is it not?—A. Yes, sir.

Q. How long have you lived there?—A. I have been there since 1876.

Q. Have you ever had anything to do with carrying the mail on the route from Silverton to Parrott City?—A. Yes, sir.

Q. What did you have to do with it?—A. I worked on it as a hand and carried the mail.

Q. On what part of the route did you carry the mail?—A. From Animas City to Parrott City most of the time.

Q. How far is it from Animas City to Parrott City?—A. Twenty miles, I believe.

Q. What time did you commence work between Animas City and Parrott City?—A. I commenced on the 8th of August.

Q. What year?—A. Eighteen hundred and seventy-nine.

Q. How long did you carry it?—A. I worked three months.

Q. During that time how many men and horses were used in carrying the mail from Animas City to Parrott City and back?—A. Oh, I was the only man that was on there during the two months that I worked there.

Q. How many horses did you have?—A. Three horses.

Q. What time did you leave Animas City?—A. Four o'clock in the evening.

Q. What time did you get to Parrott City?—A. Eight o'clock.

Q. What time did you leave Parrott City to go back?—A. Five the next morning.

Q. What time did you get to Animas City?—A. Nine o'clock.

Q. What kind of a road is it?—A. It is very good in the summer season.

Q. How in the winter?—A. It is pretty bad in the winter, I guess.

Q. You have not been over it?—A. I have not been over that road in the winter time from Animas City to Parrott City. In the summer it is a very nice road.

Q. Have you had anything to do with the route at any other time in those two months?—A. Yes, sir; I was at work one month on the line. I worked two months between Animas City and Parrott City, and the balance of the time between Animas City and Silverton; sometimes from Bowen's Ranch to Silverton, sometimes from Bowen's Ranch to Carson's Ranch, and sometimes from there to Animas City.

Q. From Carson's Ranch to Animas City?—A. Yes, sir.

Q. So you have worked off and on on the whole route?—A. Yes, sir.

Q. When you were carrying the mail from Bowen's Ranch to Silverton, how many horses did you have?—A. Three.

Q. Any men besides yourself?—A. No.

Q. When you were carrying the mail from Bowen's Ranch to Carson's, how many horses did you have?—A. Three horses.

Q. Any men besides yourself?—A. No.

Q. When you were carrying the mail from Carson's to Animas City how many horses had you?—A. Three horses.

Q. Any men besides yourself?—A. No, sir.

Q. What month was that?—A. That was in October.

Q. Eighteen hundred and seventy-nine?—A. Yes, sir; about the first of October I went on there.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. How many trips a week were you making on that run?—A. Seven.

Q. You did not work there in winter?—A. No, sir.

Q. Can you tell how many horses and men it would take to carry the mail over that route during the winter months?—A. No, sir; I was told during the winter there were not as many horses used as there were during the summer.

Q. How do you account for that?—A. There was four horses from father's ranch to Elk Park that winter; that is all I know about it; what the driver told me.

Q. Are any of those drivers here?—A. No, sir.

Q. There is not anybody here to attend this trial who carried the mail over that route during the winter season?—A. No, sir; I guess not; not that I know of.

Q. The road is bad in the winter, is it not?—A. Yes, sir; very bad.

Q. You can get along with less horses when the road is bad than you can when it is good, can you?—A. That winter there was not as many used on account of there being so much snow that they could not use some of the stations and the mail had been changed from Silverton to my father's ranch, that is thirty miles, and staid there part of the time over night and part of the time it went on to Animas City that night.

Q. It took fewer horses?—A. They did not use as many.

Q. And fewer men?—A. There was four men that winter.

Q. Will you tell me who employed you to carry the mail?—A. Bill Rhoads.

Q. Who was he?—A. The contractor, I believe.

Q. He was the subcontractor, was he not?—A. I believe so; yes, sir.

Q. Do you know whom he got his subcontract from?—A. No, sir; I can't say. He had taken Jim Downing's place.

Q. Was he a subcontractor?—A. Yes, sir.

Q. With whom was he a subcontractor?—A. I couldn't say sir; it was said, I believe, Mr. Dorsey.

Q. This thing had been subbed out then about three times?—A. He subbed it and then Jim Downing died and Bill Rhoads took his place.

Q. You do not know from whom Downing and Rhoads got their subcontract?—A. I could not say.

Q. But at all events you were not working under Mr. Steineger?—A. No, sir.

Q. Nor were you working under Stephen W. Dorsey?—A. No, sir.

Q. You do not know anything about them?—A. No, sir.

Q. But you were working for somebody who was under somebody who was a subcontractor?—A. Yes, sir; the subcontractor's name was Bill Rhoads.

Q. When the roads got bad and the weather got bad this man you were working for threw his contract down, didn't he?—A. Yes, sir.

Q. He quit?—A. Yes, sir.

Q. Who took it up after that?—A. Steineger, I believe.

Q. Do you know why he quit?—A. I couldn't say. He complained to me that he didn't get his money, or something that way.

Q. That he didn't get his money, or was not getting enough of it, or something of that kind, and so he threw the contract down?—A. Yes, sir.

Q. And that mustered you out of the service did it?—A. Yes, sir. I quit a few days before he did.

Q. Is Mr. Steineger carrying mail on that route?—A. He was when I left home.

Q. Is he here?—A. I haven't seen him.

Q. How long have you been here?—A. I have been here since the 7th of May.

Q. Were you ever here before on this business?—A. No, sir.

Mr. WILSON. That is all. I think you have been here long enough. I will not detain you any longer as far as I am concerned.

Mr. BLISS. That is all.

At this point (12 o'clock and 26 minutes p. m.) the court took its usual recess.

AFTER RECESS.

JOHN M. TREW recalled.

By Mr. BLISS :

Question. Are you familiar with the route from Silverton to Animas City ?—Answer. I am.

Q. In going from Silverton to Parrott City, does the route pass by Animas City ?—A. It does.

Q. Has it always done so ?—A. It has.

Q. Is there not a trail across from Hermosa, or somewhere over there ?—A. There is.

Q. Has that trail been used any of late years ?—A. It has not.

Q. Do you know this mail route up to Silverton ?—A. I have been over it a good many times.

Q. In the summer of 1879, were you still postmaster at Animas City ?—A. I was.

Q. When did you cease to be postmaster ?—A. March 31, 1881.

Q. After the time was reduced to fifteen hours, was that time made in winter ?—A. I didn't pay much attention to that. I was in the middle of the route.

Q. Durango and Animas City are within a mile of each other, are they not ?—A. We call it two miles.

Q. One is across the river from the other ?—A. Yes, sir.

Q. They are connected by a bridge ?—A. Yes, sir.

Q. Do you know whether in the summer and fall of 1879 the railroad had got to Durango ?—A. No, sir.

Q. When did it get to Durango ?—A. The 1st of August, 1881.

Q. Not until then ?—A. No, sir.

Q. How long prior to that time did the principal mails to the eastward go in the direction of Chama instead of going out by Silverton ?—A. The mail was sent out that way after the railroad got to Chama.

Q. Do you know about when that was ?—A. I think it was the 1st of January, 1881 ; I could not tell exactly.

Q. Prior to that time, the chief mail came by Silverton ?—A. Yes, sir.

Q. At that time when it came by Silverton down to January, 1881, can you tell whether the mail arrived regularly from Silverton ?—A. I believe it did as a general thing.

Q. Did it arrive on time in the winter ?—A. I think not. I was not at the end of the route, and did not keep a record ; sometimes it would be late.

Mr. BLISS. That is all.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. You testified with regard to route 38145, I believe ?—A. Yes, sir.

Q. That is the Ojo Caliente route ?—A. Yes, sir.

Q. And Animas City ?—A. Yes, sir.

Q. Do you not know that this route ran from Silverton, by way of Niccora, to Hermosa and Parrott City ?—A. Yes, sir.

Q. And that is the way the mail was carried, too, is it not ?—A. Yes, sir.

Q. And do you not know, after that route had been let, that on a petition Animas City was embraced in the route, and that brought the mail down to Animas City ?—A. The mail was carried by Animas City before the office was established.

Q. Before there was any office established there ?—A. Yes, sir.

Q. But there was a trail you say across from Hermosa to Parrott City ?—A. Yes, sir.

Q. Was not that trail traveled a good deal of the time by the carriers ?—A. They came to Animas City first, and then went up on the trail.

Q. They went back, did they not ?—A. Up Junction Creek and struck the trail.

Q. What did they do that for ?—A. Because it was more convenient to go to Animas City and stop there over night.

Q. They came down there to get a place to stop ?—A. Yes, sir.

Q. How far was that ?—A. The trail leaves the valley about five miles north of Animas City, and it is about three miles up to Junction Creek where you come into it again.

Q. The carrier did that for his own convenience, did he ?—A. No, sir.

Q. Then, Animas City was made a point on this route ?—A. Yes, sir.

Q. And that added ten miles to the length of it, did it ?—A. It did not. The distance was estimated by way of Animas City and the wagon road at Lightner Creek and Wild Cat Canyon.

Mr. WILSON. Please give us the schedule of distances.

Mr. BLISS. Here it is [handing a paper].

Mr. WILSON. Where is the other ?

Mr. BLISS. That is the only one I know anything about. That is the one I put in.

Mr. WILSON. Of course, there was a schedule of distances when this route was let.

Mr. BLISS. I don't know about that. It does not follow that there was. When the papers came to me there was no other schedule of distances than that excepting the one coming down to 1880.

Mr. WILSON. There is a schedule of distances certainly for the route as it was let.

Mr. BLISS. I never have seen any other than that.

Mr. WILSON. That only shows that you have not got to the bottom of the case.

Mr. BLISS. Perhaps not. You seem to be very familiar with the papers.

Mr. WILSON. I have not been entirely ignorant of these papers, I am glad to say. I happen to know something about them.

Mr. MERRICK. I am afraid your imagination is better than your memory.

Mr. WILSON. No, sir ; my memory is not at fault in regard to these papers.

Q. When Animas City was added on to that route there was taken off from the other route from Animas City to Parrott City a distance of eighteen miles, was there not ?—A. Yes, sir.

Q. And that made Animas City the terminus of route 38145 ?—A. I think so. I don't know the dates about these matters.

Q. No. I do not want your memory of dates, because the record is better than your memory of dates. But the fact is that, is it not ?—A. Yes, sir.

Q. There was ten miles added to route 38156, was there not ?—A. Not to my knowledge.

Q. From Hermosa down to Animas City was added on ?—A. I think not.

Q. You think it was not ?—A. Yes, sir.

Q. Well, there was eighteen miles taken off of the other?—A. Yes, sir; eighteen or twenty; we always called it twenty miles.

Q. You are not aware, then, that there was ten miles added to route 38156, and you are aware that twenty miles was taken off the other one?—A. If you will give me the distances from Silverton to Parrott City I can tell you all about it.

Q. Take the distance from Hermosa to Animas City. Animas City was added on route 38156, was it not?—A. Included on the route.

Q. And Parrott City was taken off the other route?—A. Yes, sir.

Q. That much you do know?—A. Yes, sir.

Q. I show you a letter dated February 11, 1879, and ask you if the signature is yours?—A. It is.

Q. Did you write that letter?—A. Yes, sir.

[The letter submitted to the witness was marked by the clerk for identification W. E. W., I.]

Mr. BLISS. Let us see it.

[The letter was submitted to counsel for the Government.]

Q. How long were you postmaster at Animas City?—A. From July, 1877, to March 31, 1881.

Q. Did you ever send to the Post-Office Department a diagram of the way the carriers travel in carrying this mail?—A. I don't remember. I presume I did. It is likely I did.

Q. Were you in the habit of doing things of that kind?—A. I have done things of that kind.

Q. About what time did you send such a diagram?—A. I could not state now.

Q. Did you send a diagram of the route from Silverton to Parrott City?—A. I could not say that I did.

Q. Showing the road the carriers travel?—A. I have made diagrams of that kind, but I don't know that I sent them to the department. Perhaps I did.

Q. Have you any idea that you ever sent one to the department in this case?—A. I think it is very likely.

Mr. WILSON. If there is any such one I would like to have it produced.

Q. When did you come to Washington?—A. I arrived here the fore part of May.

Q. Have you been here ever since?—A. Yes, sir.

Q. About what date did you come?—A. I think I got here about the 14th or 15th.

Q. Had you been here before that time?—A. I was here last February.

Q. How long were you here then?—A. I was here about two months.

Q. Did you get anything more than your per diem?—A. No, sir; I have not. I have not got anything yet.

Q. In February, did you get anything more than your per diem and mileage?—A. No, sir.

Q. Was there any agreement about it?—A. No, sir.

Q. No understanding?—A. No, sir.

Q. No extra allowance, of any kind?—A. No, sir.

Q. Did you get traveling allowances?—A. Five cents a mile.

Q. Who furnished you transportation?—A. I furnished it myself, and got my pay here.

Q. Do you know where these carriers are that were on this route in the winter time?

ne was operating it, scarcely.

Q. You have seen these carriers, and know them, do you know those that ran to Animas City.

Q. Have you seen any of them in Washington since you were here?

The WITNESS. Those that ran during the fall of 1879.

Mr. WILSON. I am talking about the winter. The summer is all right. I want to find out where the men are that ran in the winter. We may want those men here as witnesses.

A. I have not seen any of them here.

Q. You do not know where we could reach them?—find some of them at Durango.

Q. The Government could have found them there if it wanted to, could they not?—A. I suppose so.

Mr. MERRICK. If we can, you can. We have got what we want.

Mr. WILSON. You have been very industrious in bringing up summer men; I want the winter men.

Mr. MERRICK. Send for your witnesses and manage your case.

Mr. BLISS. We have brought the witnesses that speak nearest to the date of the oath that your man filed. We would be the least objectionable.

Q. I would like to know where these men are that carried in the winter time, so that we can present their evidence to how many men and horses it took to run this route during the winter and summer together. It would be much more beneficial in this case. If you can give us the information where they are I should be very much obliged to you.

The WITNESS. Do you want me to give that here?

Mr. WILSON. Certainly, right now; right where you are.

A. C. C. Gains carried it out and into Animas City.

Q. Where is he?—A. Animas City is his address. He has been running along from Pueblo to Durango.

Q. Now give us the next one?—A. There was an old fellow that carried it to Parrott City. I cannot tell you his name just now.

Q. Those are the only two you know ?—A. Yes, sir.

Mr. WILSON. Well, I believe we are through with you.

Mr. MERRICK. These men that you were inquiring about are men that you employed, are they not ?

Mr. WILSON. No, sir.

REDIRECT EXAMINATION.

By Mr. BLISS :

Q. Does this distance circular, dated Washington, June 14, 1878, bear your signature ?—A. Yes, sir.

Q. It shows Animas City on the route, does it not ?—A. Yes, sir.

Q. It is indorsed October 31, 1878, is it not ?—A. Yes, sir.

Q. At that time was the mail carried by Animas City from Silverton to Parrott City ?—A. It was.

Q. In June, 1878 ?—A. Yes, sir.

Q. Since that time it has always been carried that way ?—A. It has.

Q. [Submitting a paper.] Please look at this paper marked 1 F. I will ask you if you wrote it ?—A. Yes, sir ; that is my writing and my signature.

Q. Did you forward it to the department at or about the time of its date ? It is dated January 14, 1878.—A. I presume I did.

Mr. BLISS. I see it is indorsed here January 26, 1878.

Q. Please read that letter and see if the statements of fact in it are correct.—A. [After reading the letter.] The statements are correct, sir.

By Mr. WILSON :

Q. On the 14th of June, 1878, was Animas City a post-office on this route ?—A. It was.

Q. It was ?—A. It was a post-office. The mail went by there any way, but they had no mail.

Q. Mr. Bliss has shown you this distance circular which you say you made up. Was Animas City a post-office on this route in June, 1878 ?

—A. It was. We got our mail on that route.

Q. In June, 1878 ?—A. Yes, sir.

Mr. WILSON. Now, then, you may rest right there.

By Mr. BLISS :

Q. I understand you that whether this was embraced in the advertisement or not, you at that time got your mail at Animas City by this route ?—A. Yes, sir ; we always did from the time the office was first established.

Q. When was the office established ?—A. I believe it was in July, 1877.

Q. And you always had your mail by that route ?—A. I did.

Q. Do you know when, by formal order of the Post-Office Department Animas City was placed on that route ?—A. I could not tell you exactly.

By Mr. WILSON :

Q. And you say the postmaster at Animas City changed the mail and received the mail when it was not an office on that route. That is what you tell the jury, is it ?—A. I have not said anything of that kind.

Q. You have not ?—A. No, sir.

from the department before that they were to send it from Hermosa by the mail carrier in a little cloth sack.

Q. Did the department authorize you to open that mail? Yes; when they gave me a key.

Q. How did you get that key?—A. I got it through the Department after I was appointed postmaster.

Q. Did you make application for permission to open that? No, sir; when I had a right to open it, they sent me a key.

Q. When you were appointed postmaster they sent you a key? Yes, sir.

Q. Did you get a key specially for this purpose?—A. I believe the one sent for post-offices always.

Mr. WILSON. Oh, I am not talking about that.

The WITNESS. I don't know what you are talking about.

Mr. WILSON. You know I am not talking about that.

The WITNESS. I don't know what you are talking about.

Q. You had a key as postmaster?—A. Yes, sir.

Q. Did you have a key as postmaster for the purpose of opening the pouch that came over this route?—A. I did.

Q. And passed Animas City?—A. Yes, sir.

Q. Given to you specially for that purpose?—A. Sent to the Post-Office Department when I was appointed postmaster.

Mr. WILSON. Ah! but stop. Do not dodge this thing.

Mr. MERRICK. He is not dodging anything in the world.

The COURT. You asked him whether he got the key from the Post-Office Department, and he said he did.

Mr. WILSON. If your honor will allow me, I will have done with this witness.

Q. Did you have more than one key?—A. I did not.

Q. The key that you got was the key that you received at the department?—A. Yes, sir.

Q. And that was for the purpose of opening the mails that came over the route?—A. Yes, sir.

Q. But Animas City was not on this route, was it?—A. I don't know, sir.

The WITNESS. I don't understand what you mean.

Mr. WILSON. Do you not know that Animas City was not a post-office on this route?

The COURT. When?

Mr. WILSON. Up until the time it was ordered on the route, which was long after this time.

Mr. MERRICK. What time was it ordered on?

Mr. WILSON. You let the witness alone.

Mr. MERRICK. I am not talking to the witness. I am talking to you.

Mr. WILSON. What is the date of the order?

Mr. TOTTEN. The date when the order was made was January 23, 1879.

Q. Now, prior to January 23, 1879, do you not know that Animas City was not a post-office on this route from Silverton to Parrott City?
—A. I know it was. I was one of the first settlers in Animas City and the mail always went by there. While I was postmaster the department furnished me with a key to open the mail.

Q. To open that particular mail?**—A.** Certainly.

Q. Was Animas City a post-office on this route?**—A.** Yes, sir; the mail passed by there and we got the mail out of the sack.

Q. It passed by there?**—A.** Stopped there.

Q. But it was not an office on this route?**—A.** We got the mail that way all the same.

Q. Did you not on the 14th of January, 1878, write a letter to the Post-Office Department asking that Animas City should be placed on this route?**—A.** I presume I did.

Q. You know you did, do you not?**—A.** Yes, sir.

Q. Then you say that you exercised the right of opening the mails that were at a post-office that was not on the route over which those mails were being carried.

Mr. MERRICK. He has not said so.

Mr. WILSON. It was not on the route.

Mr. BLISS. You assert that it was not. You had better testify.

Mr. WILSON. I assert from the order in this case.

The COURT. There was a post-office at Animas City, and whether it was on the route running north or the route running east, there was a post-office there, nevertheless, and he was the postmaster.

Mr. WILSON. Exactly.

The COURT. And when a mail came there the Post-Office Department furnished him with a key to open that mail, and he would open it wherever it came from.

Mr. WILSON. No, your honor. He had no right to meddle with a mail that was not on that route.

The COURT. I do not know anything about the route. The department gave him a key.

Mr. WILSON. That is just where the difficulty is.

The COURT. The witness understands the situation.

Mr. BLISS. I think I have a right to ask him a question.

Mr. WILSON. No. I am not through. I want to correct a misapprehension in the mind of the court. He has, it seems to me, attempted to give the impression that he got a key and had authority from the Post-Office Department to open this pouch and this mail. He got nothing of the kind. He simply had a key as postmaster, which authorized him to open the mails on the routes upon which this was an

He had no right to open any other mail. He might just as well go up to Hermosa and opened the mail.

BLISS. May I ask a question?

COURT. Yes.

By Mr. BLISS:

This route having been let as sixty-nine miles on the 14th of June, a printed circular, with the printed name of Thomas J. Brady, was reciting about as follows:

The Postmaster-General requests the insertion in the columns named below of the names of the post-offices on Colorado route 3d156, between Silverton and Parrott City, written in the order in which they are situated, with the distances from one to another. Each postmaster will give the distance of his office from the post-office immediately preceding, certifying the same by his signature. Fulfill this duty promptly and return the paper without delay to this office.

Such a circular addressed to John W. Dorsey, as contractor, was sent to him. You say it bears your signature as the last signer there?—A. Yes, sir.

Q. The postmaster preceding you states that the distance from Hermosa to Animas City is eight and a quarter miles. You state that the distance from Animas City to Parrott City is eighteen miles. Was that correct?—A. Yes, sir. There is a dispute about that distance; eighteen or twenty miles.

Q. And that circular was at or about its date returned to the Post-Office Department, was it not?—A. Yes, sir.

The COURT. Now let the witness explain.

By Mr. BLISS:

Q. When you speak of the question where a post-office was on the route, do you mean whether in fact it got its service on the route or whether upon the records of the Post-Office Department it appeared as on the route?—A. It got the service.

Mr. WILSON. Although it was not on the route.

The COURT. Let the witness explain as he was going to answer Judge Wilson's inquiry. [To the witness.] Now, make your explanation and let us see if you comprehend the question.

A. [Continuing.] After we got the post-office established at Animas City the carrier found fault because he had to bring the mail there for nothing, as he claims. He had to come there to stay over night, anyhow. It was shorter to go across this trail above, and he collected toll off of us. We raised money, and we paid him considerable. I examined into the matter and found there was a schedule of sixty-nine miles from Silverton to Parrott City. That schedule would have taken him around the old trail around Sultan Mountain and then through to Animas City out over the road mentioned a while ago, the longest distance from Silverton to Parrott City, and I wrote these letters to have Animas City put on that route so that we would not have any more trouble with the carrier.

By Mr. WILSON:

Q. I begin to understand it now. The citizens were paying the carrier for bringing the mail down there?—A. Yes, sir.

Q. And then after a while the Government got to paying it?—A. The Government was paying it. When I found out how it was I reported the facts to the department.

Q. The Government was paying for carrying it from Pagosa to Animas?—A. For carrying it by Animas City as the schedule showed

Q. The carrier said he was carrying what he was not required to carry?—A. He was paid for carrying it by the Government. He was paid for carrying it sixty-nine miles. He carried it around Animas City.

The COURT. That explains that sixty-nine miles.

The WITNESS. Yes. Then the road was made through the canyon. That brought it down to sixty-five miles.

By Mr. BLISS :

Q. Then if on the 23d of January, 1879, an order was made that Animas City should be embraced on route 38156, and that that added ten miles to the distance, was it true, in fact, that it added ten miles to the distance?—A. No, sir.

By Mr. WILSON :

Q. You certified to it, did you not?

Mr. BLISS. No; he did not. You cannot find any certificate of it.

A. The parties tried to get me to certify to it a good many times, but I never would.

By Mr. BLISS:

Q. Who tried?—A. The man who was carrying the mail.

By Mr. WILSON :

Q. What was his name?—A. His name was Holmes.

Q. What did he have to do with that mail?—A. He carried it in those times.

Q. Who was he carrying it for?—A. I do not know.

Q. Was he a subcontractor?—A. I think not. He was hired by somebody, I don't know who.

Q. When was that?—A. In 1877 and 1878.

Mr. WILSON. Now, if your honor please——

The COURT. [Interposing.] That was before your time?

Mr. WILSON. I should think so.

Mr. MERRICK. He says they tried to get him to certify to it and he refused to certify to it.

Mr. WILSON. That was in 1877.

Mr. MERRICK. No matter when it was.

Mr. WILSON. That was before these contracts were made, your honor.

Mr. MERRICK. Distance does not change.

Mr. BLISS. I now offer in evidence the table of productiveness and the schedule:

Statements and recapitulation of payments made to Dorsey, Miner and Peck, their subcontractors and assignees on nineteen routes below described.

Routes.	Termini.		State.	Pay accrued.	Fines and deductions, &c.	Remissions, &c.	Total payments.
	From—	To—					
8156	Silverton..	Parrott City.	Colorado.	\$39,534 23	\$4,041 50	\$38 06	\$35,530 79

Form of certificate.

(F.)

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, J. H. Ela, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this office, showing the gross and the net revenues of the post-offices located on route No. 46132, Julian to Colton, California, from July 1, 1878, to June 30, 1881.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, this twelfth day of June, in the year of our Lord one thousand eight hundred and eighty-two,

[SEAL.]

J. H. ELA,
Auditor.

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Julian, Cal.....	3 qr., 1878..	\$91 59	.....	\$51 20	.....
	4 " 1878..	60 58	.....	39 84	.....
Also, on route 46129.....	1 " 1879..	61 93	.....	86 33	.....
	2 " 1879..	125 29	.....	95 26	.....
		339 39	.....	222 63	.....
	3 qr., 1879..	70 40	.....	39 27	.....
	4 " 1879..	81 46	.....	48 10	.....
	1 qr., 1880..	53 42	.....	23 31	.....
	2 " 1880..	79 57	.....	51 33	.....
		284 85	.....	162 01	.....
	3 qr., 1880..	49 75	.....	21 38	.....
	4 " 1880..	128 74	.....	98 99	.....
	1 " 1881..	1 11	.....	.....	\$25 54
	2 " 1881..	72 69	.....	45 34	.....
		252 29	.....	165 71	.....
			Less cr	25 54	.....
				140 17	.....
Powell's Store, Cal.....	3 qr., 1878..	.....	.....	.....	.....
Discontinued M'ch 28, 1879.....	4 " " ..	38 12	.....	38 12	.....
	1 " 1879..	.....	.....	.....	.....
	2 " " ..	.....	.....	.....	.....
		38 12	.....	38 12	.....
Warren Ranch, Cal., established April 8, 1881.....	3 qr., 1878..	.....	No account..	.....	65.
Oak Grove, Cal.....	4 " " ..	4 50	.....	2 41	.....
	1 " 1879..	4 77	.....	2 41	.....
	2 " " ..	.....	.....	.....	2 32
		9 27	.....	4 82	2 97
			Less credits..	2 79	.....
				1 85	.....
	3 qr., 1879..	2 50	.....	.....	35
	4 " " ..	6 27	.....	1 99	.....
	1 " 1880..	5 55	.....	1 33	.....
	2 " " ..	4 62	.....	59	.....
		18 94	.....	3 91	.....
			Less credits..	35	.....
				3 56	.....
	3 qr., 1880..	10 43	.....	4 99	.....
	4 " " ..	5 52	.....	75	.....
	1 " 1881..	6 08	.....	1 85	.....
	2 " " ..	14 76	.....	9 33	.....
		36 79	.....	16 92	.....

Name of office.	Quarter.	Gross revenue.	Net revenue.	Credits.
Temecula, Cal.....	3 qr., 1878..	922 42	\$119 17	
	4 " " 1878..	36 33	27 23	
	1 " " 1879..	29 30	21 07	
	2 " " " 1879..	14 15	2 82	
		106 20	70 29	
	3 qr., 1879..	21 83	2 85	
	4 " " " 1879..	24 82	13 49	
	1 " " 1880..	42 32	29 12	
	2 " " " 1880..	31 06	14 99	
		120 29	66 45	
		26 63	16 12	
		49 42	37 16	
	3 qr., 1880..	43 57	26 60	
	4 " " " 1880..	53 36	31 79	
	1 " " 1881..			
	2 " " " 1881..			
San Jacinto, Cal	3 qr., 1878..	2 40		23 00
	4 " " " 1878..	12 10	6 10	
	1 " " 1879..	6 00		2 00
	2 " " " 1879..	16 00	6 35	
		36 50	12 45	6 00
			Less credits	6 49
				5 96
	3 qr., 1879..	13 10		27
	4 " " " 1879..	24 32	15 85	
	1 " " 1880..	6 49		4 00
	2 " " " 1880..	1 02		1 51
		45 02	15 85	17 10
			Less net	1 15 85
			Excess credits	1 23
	3 qr., 1880..	27 62	16 02	
	4 " " " 1880..			9 37
	1 " " 1881..			12 46
	2 " " " 1881..	17 92	6 13	
		44 64	22 15	30 83
			Less credits..	20 63
				22
Colton, Cal. Also supplied by R. R. and by routes 46134 and 46292.	3 qr., 1878..	96 83	29 90	
	4 " " " 1878..	151 52	81 83	
	1 " " 1879..	166 49	46 56	
	2 " " " 1879..	165 92	44 11	
		600 76	164 40	
	3 qr., 1879..	121 37	17 78	
	4 " " " 1879..	160 91	40 40	
	1 " " 1880..	203 74	61 52	
	2 " " " 1880..	184 53	47 74	
		670 57	167 50	
	3 qr., 1880..	141 93	25 79	
	4 " " " 1880..	182 47	75 30	
	1 " " 1881..	147 94	51 43	
	2 " " " 1881..	194 54	55 41	
		666 83	304 85	

JOHN T. CALLEGHAN recalled and examined.

By **Mr. BLISS**:

Question. [Submitting a jacket filled with papers to witness.] What is this bundle of papers, among the others that you handed to me just now?—Answer. These are cases of deduction in the office of the Second Assistant Postmaster-General, division of inspection.

Q. Cases of deduction for failure to arrive?—A. Yes, sir.

Q. On what route?—A. Route 38156, from Silverton to Parrott City.

Q. For what quarter?—A. For the quarter ending March 31, 1880.

Q. Made up in the manner you explained yesterday?—A. Yes, sir.

Q. Any remissions?—A. Yes, sir; those are remissions on the back of, dated August 19, 1880.

Mr. TOTTEN. I thought your honor ruled out this kind of testimony yesterday.

The COURT. It has not yet been offered.

Mr. BLISS. [After having submitted papers to counsel for defense.] Have you any objection, gentlemen?

Mr. WILSON. Well, if you put in any put them all in. We want the whole, or we do not want any.

Mr. BLISS. I propose to offer the jacket.

The COURT. Well, I object that you cannot read all these papers.

Mr. TOTTEN. These are fines, deductions, and remissions, your honor.

The COURT. I understand. I do not see what tendency they have to establish either the combination or the corruption.

Mr. BLISS. Your honor will bear in mind, and it is only for that reason that I desire to present it, because one consideration was not presented to your mind yesterday when the question was up; these are papers connected with a particular quarter ending March 1, 1880, upon this route where \$1,958.05 was first deducted, and then \$1,845 of it was remitted. Yesterday I called your honor's attention solely to the ground of remissions based upon the alleged cause of remissions—of the inability to perform the time as therefore having some bearing, which your honor thought was not very direct, upon the question of the good faith of the expedition. Now, I desire, while reminding your honor of that point as to why it is admissible, to call your honor's attention also to the allegations in the indictment which aver, among other things, as part of the conspiracy, the corrupt allowance of remissions, in connection with other matters, which we expect to offer at some future time as bearing upon that precise feature of the case.

The COURT. You first offered them for the purpose of proving the possibility of performing the service.

Mr. BLISS. We offered them yesterday, as in that connection on that date, for the purpose of proving the impossibility of performing the service.

The COURT. That is a good ground for making the remissions, is it not?

Mr. BLISS. No, sir; I do not know that it is, because under the rules of the department, as I understand it, the question of the act of God is a matter where the contractor and not the Government accepts the responsibility. I do not want to argue that phase of the case, because your honor has decided it, and I do not propose to try to reopen it. I simply bring it to your honor's attention, and do not desire to argue it even on the other ground which has a bearing on the question charged in our indictment, and as to which we expect to offer some evidence at

a later stage, that it was a part of the conspiracy that for improper motives and improper reasons Mr. Brady was to make remissions. Of course, if there is evidence of that sort, we should have to show remissions.

The COURT. But you would have to show remissions for improper grounds.

Mr. BLISS. I say we expect to do that by other matters.

The COURT. All the evidence in this case shows that the time was, if anything, unreasonably short, considering the character of the route, and that the failures were excusable.

Mr. BLISS. Were excusable in a certain sense, or excusable because the contractor did not perform the service. But it did not justify the Post-Office Department or the Second Assistant Postmaster-General in making an order for a time that could not be performed, and having made the order for a time that could not be performed and taken out of the Treasury therefore money for service that could not be rendered. It did not justify him, having thereafter imposed fines, because the service was not rendered, remitting that imposition of fine and thereby take so much money out of the Treasury. We say, and we expect to offer evidence to that effect, that it was a part of this conspiracy, one branch of it, that there were to be remissions improperly made, and that there were remissions to be made—we do not use the word corruptly in the indictment—from improper motives.

Mr. TOTTEN. You do not make that allegation in the indictment.

Mr. BLISS. We charge that it was a part of the conspiracy to make improper remissions.

The COURT. Let me see what it does say about that. Refer me to the page of your indictment. [After a pause.] If the fines were improperly made—that is, if the failures were excusable, then the remission for the failures is not taking any money improperly from the Government, because the Government has no right to put money into its own pocket from fines improperly imposed. If this evidence were tending to prove that this route was unreasonably expedited for the benefit of these defendants, I would unhesitatingly admit the evidence, but I do not see how the imposition of fines for failures, and the subsequent remission of those fines by the Second Assistant Postmaster-General, would have any tendency at all to show that the expedition allowed was unreasonable because they were subsequent, and if you want to bring that charge home to the Second Assistant Postmaster-General you will have to fasten it upon him by something that occurred before.

Mr. BLISS. We expect to show, your honor, that there were direct payments made to Mr. Brady of a portion of the sums remitted.

Mr. TOTTEN. Then you had better show it now.

Mr. BLISS. We expect to prove it at the proper time.

Mr. TOTTEN. If you have got that testimony why not let us see it?

Mr. MERRICK. I was called away to attend to some other duty yesterday when this question was up, and I desire now to make one suggestion in connection with it. Apart from the views stated by Mr. Bliss just now, I think that there is a very important consideration arising out of the offer as affecting the good faith of the original expedition. Where a route is being run by a contractor, and any circumstance occurs for which he is not to blame that makes it impossible for him to perform the service he has undertaken according to his obligation and covenant, there he certainly ought to have any fine imposed remitted upon a showing of that circumstance. But where a route is

expedited to a time which it is utterly impossible to make, and the contractor is fined for not making the time, and then subsequently the fine is remitted, because of the impossibility for him to make the time prescribed in his contract, it is an admission by the party remitting the fine of the impossibility of making the time he had originally required it to be run. Now, if a circumstance occurs subsequently to the making of the contract, if the act of God intervenes——

The COURT. [Interposing.] It is not the act of God at all. These mountains were built before the contract was made. There was no act of God to prevent the performance of these trips. I speak of the act of God as an act of an unusual character.

Mr. MERRICK. Certainly; so I understand. Now then the cause for the remission of these fines was not an act of any unusual character, unexpected at the time the work was given out, but was a cause existing at the very time the work was given out, and which being known to the parties who required the work to be done in a specified time ought to have prevented them from so requiring. Now, if there are subsequent remissions of deductions, because of the existence of a condition of things which existed at the time the work was required, that is an admission by them of the improvidence of the original order, to use the mildest possible term, and where official discretion is improvidently exercised, repeated, and to such an extent that it shocks common sense, if you choose, it becomes evidence of corruption. Now, here this route is expedited, and required to be gone over in a time which it was impossible to make in the then condition of things. The contractor fails to make the time. The department remits the deduction of the fine which is made in consequence of his failure to make the time, on the ground that at the time he undertook to do it on the order of the department it was impossible to be done. That is an admission that the man who makes the remission ought never to have issued the order.

The COURT. In the progress of this trial, I have seen piles of petitions from men of the highest standing in the country, official and otherwise, to the Post-Office Department for increase of service and expedition upon these routes. Now, looking on the face of those papers, I cannot see anything to condemn in the conduct of the Second Assistant Postmaster-General in complying with these petitions. He is not to be supposed to have gone over those routes himself, but he acts upon the petitions before him as a public officer must in all cases. You have not brought home to him any facts, so far as I can remember, to show that in ordering these expeditions on these routes and the increase of service, he acted from any improper motives, because he is backed by these petitions from gentlemen of the highest position in all quarters of that country, and men presumed to be acquainted with the routes, and with the improvements and industries that are springing up in this new country. If I had seen that there was anything in the evidence to bring home a reasonably strong suspicion of improper motive on the part of the Second Assistant Postmaster-General, I should not hesitate to go further into this and investigate it. But there is no evidence of that kind; the contracts are apparently sustained by petitions, and the petitions justified the Postmaster-General in doing what he did. Now, am I to allow the time of the court to be spent in investigating the fines imposed and the remission of those fines subsequently, in regard to routes which are unimpeached? I shall exclude this evidence for the present, at any rate.

Mr. MERRICK. We do not ask it to be introduced as to routes that are unimpeached.

The COURT. I know. You impeach them by your indictment, I know. and you impeach them by your speeches; but by the evidence so far introduced here, I do not see it.

Mr. MERRICK. Your honor I think, if I am not mistaken, stated the other day that at the time the Postmaster-General made an order he had before him the evidence that it was impossible to comply with it.

The COURT. I do not remember that.

Mr. MERRICK. There was one route, I think it was on Friday, when the testimony was introduced, where you stated that when he made the order he had before him a letter from his postmaster stating that to make the time he required was impossible.

Mr. TOTTEN. You are mistaken about the date. It was long afterwards.

The COURT. Oh, there may be a letter from a postmaster on a route which was written subsequently to the contract. But I want to know what the Postmaster-General did with his eyes open when he entered into the contract. In regard to this route, I think from the evidence that a greater part of the year the service could be performed within the time prescribed. The evidence is of that kind. There were seasons in the winter time when it could not be performed at any time, and if the Postmaster-General was aware of the fact that here was a route upon which service could not be performed at all at certain seasons of the year, and he willfully made a contract by which he undertook to pay largely for service when he knew the service could not be performed, and to expedite over routes where the service could not be performed, that would be strong evidence against it. But when he seems to have based his conduct upon petitions of Senators, Members, governors, and members of the legislature, who stated none of these difficulties, I am unwilling to impute wrong before it is proven.

Mr. MERRICK. The testimony was given on Friday.

The COURT. In regard to that the contract has been made. So some postmaster writes to the Postmaster-General, "In my opinion the service cannot be performed on this route, the contract cannot be carried out." Is the Second Assistant Postmaster-General to believe the statement of a postmaster in opposition to all the petitions which he has acted upon in giving out the contract, and to break up the contract break up the arrangement because some postmaster has written about it?

Mr. BLISS. Your honor excludes this testimony, then?

The COURT. I do for the present. If you can introduce any such evidence as that you spoke of awhile ago, I will admit it then.

Mr. BLISS. That is all for the present for that route. Now we will take up Julian to Colton, route No. 46132. There has been no map prepared upon that route, sir. The contract was made with John M. Peck on the 15th of March from Julian, California, by Warner Ratch, Oak Grove, Temecula, and San Jacinto to Colton and back once a week, at \$1,188 per year. It is executed on the 11th of May, 1878, the schedule being to leave Julian Tuesday at 2 p. m., and arrive at Colton Thursday by 8 p. m.; leave Colton Friday at 6 a. m., and arrive at Julian Sunday by 10 a. m.

[The contract just referred to and read from was submitted to the clerk to be marked for identification and was by him marked 1 G.]

The COURT. You have no map of this route?

Mr. BLISS. No, sir; no map. The evidence was such that we thought it would not be needed. The topographer was exceedingly

busy on new routes to be started. The evidence in this case is confined to but very few papers, sir. The first paper is a very dilapidated jacket, which reads as follows :

Date, June 24th, '79. State of California.

Number of route, 46132.

Termini of route, Julian and Colton.

Length of route, 121 miles.

Number of trips per week, one.

Contractor, J. M. Peck.

Pay, \$1,188.

Hon. P. D. Wigginton, M. C., recommends two additional weekly trips on this route. Hon. Newton Booth, U. S. S., and Hon. J. T. Farley, U. S. S., also refer petition, asking for increase of service to three trips per week and expedition of schedule. Offices on the route to be benefited are four in number, yielding an aggregate annual revenue of \$314.

John M. Peck, contractor on route, submits a sworn statement as to the additional number of men and animals required to perform service three times a week on a schedule of 36 hours [present schedule 54 hours], and also submits proposition to perform service in accordance therewith.

Cost of two additional weekly trips pro rata	\$2,376	per. an'm
Expedition, " "	7,128	" "

Total increase.....	\$9,504	" "
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Proposition for two additional weekly trips, together with expedition, \$7,722 per annum.

That is all in red ink. Now, in black ink :

First. Increase service two trips per week from July 14th, 1879, and allow contractor \$2,376 per annum additional pay, being pro rata.

Second. Reduce running time from 54 hours to 26 hours, and allow contractor \$5,346 per annum additional pay, being less than pro rata, but in accordance with his written agreement, from July 14, 1879.

Increase pay of subcontractor in like amount.

BRADY.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 2 G.]

Inclosed in that is the following :

CHICO SPRINGS, N. M., December 30th, 1878.

Hon. THOMAS J. BRADY,

Second Assist. P. M. General :

SIR : I hereby offer to carry the mail on route 46132, Colton to Julian, once a week, on a reduced schedule of 26 hours, for an additional compensation of one thousand seven hundred and eighty-two dollars per annum, being less than pro rata ; or three trips per week, and reduce schedule of thirty-six hours, for an additional compensation of seven thousand seven hundred and twenty-two dollars per annum, being less than pro rata for expedition, and pro rata for additional trips.

Respectfully,

JOHN M. PECK.

That is indorsed :

1879, April 11th.

46132, Cali.

Proposal of John M. Peck, to perform three times a week service on a schedule of 36 hours.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 3 G.]

CHICO SPRINGS, N. M., Dec. 30th, 1878.

Hon. THOS. J. BRADY,

Second Assistant P. M. General :

SIR : The number of animals and men necessary to convey the mail on route 46132, from Colton to Julian, three times a week on the present schedule is four men and five

animals. The number necessary to convey said mail on a schedule of 26 hours three times per week is nine men and eighteen animals.

Respectfully,

JOHN M. PECK.

TERRITORY OF NEW MEXICO,
County of Colfax :

On this 30th day of Dec., 1878, personally appeared before me, John M. Peck, and being duly sworn deposes that the above statement is true as he verily believes.

Witness my hand and seal.

J. S. TAYLOR,
Notary Public.

[The paper just read was not marked by the clerk, it having been previously marked upon another route 52 A.]

Mr. TOTTEN. Your honor will observe that that is long prior to the date of this alleged conspiracy.

The COURT. Yes.

[The paper just read was submitted to the jury for inspection.]

Mr. HENKLE. Do you offer that affidavit?

Mr. BLISS. Yes.

Mr. HENKLE. We object to it.

The COURT. It falls within the principle I have frequently announced.

Mr. HENKLE. We simply want to reserve an exception.

Mr. BLISS. In this jacket which is indorsed "Hon. P. D. Wigginton, M. C., recommends two additional weekly trips on this route. Hon. Newton Booth, U. S. S., and Hon. J. T. Farley, U. S. S., also refer petitions asking for increase of service to three trips per week, and expedition of schedule." There are three different classes of petitions, and I am going to see if it is possible to escape reading them all.

Mr. WILSON. No, sir ; I do not think it will be, with my consent.

Mr. TOTTEN. Read them all.

Mr. BLISS. Then I will read them all.

UNITED STATES SENATE CHAMBER,
Washington, April 10, 1877.

Hon. D. M. KEY,
Postmaster-General :

DEAR SIR: I respectfully ask your favorable consideration of the enclosed petitions for increase of service on mail route 46132, from Colton to Julian, in California.

Your ob't servant,

NEWTON BOOTH.

I concur in the above recommendation.

J. T. FARLEY.

It is indorsed on the back :

Hons. Newton Booth and J. T. Farley recommend increase of service.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 4 G.]

Mr. TOTTEN. Those gentlemen were Senators from California.

Mr. BLISS. Yes ; Senators from California ; and they are indorsed on the back as recommending increase of service and expedition.

Mr. WILSON. Reserve your speech until you get through.

Mr. BLISS. Mr. Totten did not reserve his.

COLTON, CAL., *April 1st, 1879.*

THOMAS J. BRADY,
Second Assist. P. M. General :

In addition to the two routes enclosed, would recommend that the route 46132 be increased to three trips per week.

This will give mail matter to the *whole route* from 24 to 48 hours sooner than by the present one, via San Diego, as can be plainly seen from the map.

Route from Riverside to Temecula is unnecessary, as Riverside is not a distributing point. The same objection applies to route from Riverside to Temescal.

Route from Spadra to Temecula, via Chino, Temescal, &c., is wholly unnecessary. No call exists for it at all.

Please send me specifications for routes now in existence in Southern California, which will greatly aid in making reports on changes and new routes.

Any information at my command, or suggestions as to speed or economy in the service, are cheerfully at your command.

Respectfully,

SCIPPIO CRAIG,
P. M., Colton.

The indorsement on that is :

P. M. Colton recommends increase of service to three times a week, &c.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 5 G.]

We, the undersigned, of Temecula, California, respectfully represent that urgent need exists for the continuation of a new route from Temecula, via the Laguna and Temescal to Riverside three times a week.

That is signed by fifteen or eighteen petitioners.

[The paper just read was submitted to the clerk to be marked for identification, and was by him marked 6 G.]

To the honorable D. M. KEY,
Postmaster-General, Washington, D. C. :

The undersigned, citizens of California, respectfully represent that route from Colton to Julian, No. 46132, is a very important route. It is the only communication from the rich mines at its southern terminus to the Southern Pacific Railroad, and more frequent and more rapid mail communication is necessary.

That a new road has been opened from the San Jacinto Valley, and the same is being rapidly settled. That route number 46130 has no railroad communications, and that by this change close connection will be made.

We therefore petition that the service on that route be made tri-weekly, and that the schedule be reduced from the present running time to 36 hours.

That is signed by one postmaster and twelve or fifteen other persons.
Annexed to that is the following :

To honorable D. M. KEY,
Postmaster-General, Washington City, D. C. :

The undersigned, citizens of Southern California, represent that the route from Colton to Julian, number 46132, is a very important route. It is the only communication from the rich mines at its southern terminus to the Southern Pacific Railroad, and more frequent and more rapid mail communication is necessary.

That a new road has been opened from the San Jacinto Valley, and the same is being rapidly settled. That route number 46130 has no railroad connection, and that by this change close connection will be made and greatly accommodate parties on this important route.

We therefore petition that the service on that route be made tri-weekly, and that the schedule be reduced from the present running time to 36 hours.

That is signed by the postmaster at Oak Grove and twelve or fifteen others.

[The two papers pinned together just read were submitted to the clerk to be marked for identification, and were by him marked 7 G.]

There is a similar petition identical in words signed by ten petitioning in that same way, that the schedule be reduced from the present running time to thirty-six hours.

[The paper just referred to by counsel was submitted by him to the clerk to be marked for identification, and was by him marked 8 G.]

I have here another petition in the same language signed by three pages of petitioners asking the same thing, that the schedule be reduced from the present running time to thirty-six hours, asking also tri-weekly service.

[The paper just referred to by counsel was by him submitted to the clerk to be marked for identification, and by the clerk marked 9 G.]

The next petition is as follows :

To Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General, Washington, D. C. :

SIR: We, residents along route 46132, from Julian via Warner's Ranch, Oak Grove, Temecula, and San Jacinto to Colton, and receiving our mail at above offices, respectfully request that you increase present service to a tri-weekly mail. The same is necessary and will thus make connection with the mail on route 46130, which at present only runs to Temecula and is without railroad connection. We also request that the same be run on the following schedule of arrivals and departures :

Leave Julian Tuesday, Thursday, and Saturday at 6 a. m.

Arrive next days by 8 p. m.

Leave Colton Tuesday, Thursday, and Saturday at 6 a. m.

Arrive next days by 8 p. m.

That is signed by twelve or fifteen petitioners.

[The paper just read by counsel was submitted to the clerk to be marked, and was by him marked 10 G.]

Also another petition addressed to Mr. Brady by the residents along the route 46132 from Julian via Warner's Ranch, Oak Grove, Temecula, and San Jacinto to Colton, of similar nature with the last, which is signed by about forty-seven petitioners.

Also another petition attached to that, signed by two columns of petitioners, of similar import.

Also another petition of similar import, signed by about forty petitioners.

Also another petition signed by the postmasters on routes 46130 and 46132, which is as follows :

To the Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General :

DEAR SIR: We, postmasters on routes 46130 and 46132, respectfully recommend above increase of service on mail route 46132 as necessary, in order to make connection at Temecula with route 46130, and for the accommodation of the business interests of parties on the routes.

JAMES B. MASON,

Postmaster at Julian.

J. L. POWELL,

Postmaster at Powell Store.

JACOB BERGWAIN,

Postmaster at Oak Grove.

S. LEWIS WOLF,

Postmaster at Temecula.

J. B. KENNEDY,

Postmaster at San Jacinto.

SCIPIO CRAIG,

P. M. at Colton.

Then, attached to that, a petition similar to the others, signed by about forty-five petitioners.

[The bundle of petitions just referred to and read by counsel were submitted to the clerk to be marked, and were by him marked 11 G.]

The next is a petition in the same language by citizens along the route asking a schedule leaving Julian at 6 a. m., three days in the week, and arriving at Colton the next days at 8 p. m., signed by about ten petitioners.

[The paper last referred to was marked by the clerk 12 G.]

Also another one in the same language, asking for the same sched-

ule, leaving Julian Tuesdays, Thursdays, and Saturdays at 6 a. m., and arriving at Colton next day by 8 p. m. Signed by about two pages of petitioners.

[The paper last referred to was marked by the clerk 13 G.]

Mr. WILSON. Are you going to produce any map on this route?

Mr. BLISS. I am not. I know of no map.

Mr. WILSON. Has not your man made a map of this route?

Mr. BLISS. No, not that I know of. I asked this morning if there was any map, and was told there was not.

Mr. WILSON. You have not ordered one?

Mr. BLISS. We ordered maps of all the routes, but in consequence of the new service let on the 1st of July, the topographer was very busy and the maps have not all come in. This is one of the routes where the question of geography did not seem so important as in the case of some of the others. This matter is in a very simple compass, your honor. The petitions all ask for thirty-six or thirty-eight hours. The jacket states that they ask for thirty-six hours and the order is for twenty-six hours.

Mr. MERRICK. And the only thing to base it on is those papers.

Mr. BLISS. Altered from thirty-six to twenty-six; and with the proposition altered also.

The COURT. Is "Do this—Brady," on that jacket?

Mr. WILSON. Yes.

Mr. MERRICK. Yes, sir; it is Brady's order. Here is a memorandum of it on the back of it, thirty-six hours.

Mr. BLISS. Your honor will notice that this oath is sworn to on the 30th of December, 1878, and the proposition is dated the 30th of December, 1878. They are filed in the department on the 11th of April, 1879. The order was made on the 24th of June, 1879, and the short time of twenty-six hours appears nowhere except in the proposition and the oath and in the order.

Mr. TOTTEN. Just read your papers and let us not have so much talk about them.

Mr. MERRICK. He is telling the court what is in them.

Mr. WILSON. Let us have a map.

Mr. BLISS. I know of no map.

The COURT. A map could not throw a light upon such a question as that.

Mr. WILSON. I think it would, your honor.

The COURT. Who was the contractor in this case?

Mr. BLISS. The contractor in this case was Peck.

The next is a jacket, as follows:

Date, December 12, 1878. State, California.

No. of route, 46132.

Termini of route, Julian and Colton.

Length of route, 120 miles.

No. of trips, one.

Contractor, John M. Peck.

Pay, \$1,188 per annum.

Contractor and subcontractor request the withdrawal of subcontract.

From October 1st, 1878, stop all payments to subcontractor, the contractor and subcontractor having asked for withdrawal of subcontract.

BRADY.

[The paper last read was marked by the clerk 14 G.]

Inclosed in that jacket is the following:

NOVEMBER 2, 1878.

HON. THOMAS J. BRADY,
2nd Assistant Postmaster-General:

SIR: The undersigned contractor and subcontractor on route 46132 ask leave to withdraw their subcontract from the files of the department.

Respectfully,

JOHN M. PECK.
J. CHAUNCEY HAYES.

[The paper last read was marked by the clerk 15 G.]

The next is a jacket:

Date, May 24, 1879. State, California.

No. of route, 46132.

Termini of route, Julian and Colton.

Length of route, 120 miles.

No. of trips per week, one.

Contractor, John M. Peck.

Pay, \$1,188 per annum.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of H. M. Vaile, whose post-office address is Independence, Jefferson County, Missouri, for service on this route, at \$1,188 per annum from April 1st, 1879, to June 30th, 1882, has been filed in this office subject to fines and deductions.

BRADY.

[The paper last read was marked by the clerk 16 G.]

Inclosed a subcontract headed John W. Dorsey & Co., for service on this route one trip per week, \$1,188, between John M. Peck and H. M. Vaile, made on the 1st day of April, 1878, providing for service from the 1st day of July, 1878, to the 30th day of June, 1882. It is agreed that the party of the second part shall receive 100 per cent. of the amount received by the party of the first part for expedition. The subcontractor is to bear fines and deductions.

Mr. WILSON. It is a transfer of the whole thing.

Mr. BLISS. The contract is signed by John M. Peck, by John R. Miner, his attorney in fact, and H. M. Vaile, and is witnessed by M. C. Rerdell.

[The paper last read was marked by the clerk 17 G.]

Mr. HINE. When was it filed?

Mr. BLISS. It was filed in the department May 24, 1879. The oath in this case, I see, has not been marked anew. It was marked when proved by Mr. Taylor, the notary, 52 A. I have read all the papers, I believe, that I desire to read. I have one witness.

The COURT. Call your witness.

JACOB BERGMAN sworn and examined.

By Mr. BLISS:

Question. Where do you reside?—Answer. I reside at Oak Grove, San Diego County, California.

Q. How long have you lived there?—A. Twenty years.

Q. Have you ever had anything to do with carrying the mail on the route from Julian to Colton?—A. I have.

Q. I think you were postmaster at one time on that route?—A. I have been twice a postmaster.

Q. Whereabouts?—A. At Oak Grove.

Q. You are not postmaster now?—A. I am not. I am carrying the mail now.

Q. When did you commence to carry the mail there?—A. The 14th day of November, 1878.

you are carrying it at the present time ?—A. Yes, sir.

When you commenced carrying the mail how many trips per week did you make ?—A. One trip.

What time ?—A. Fifty-four hours, I believe ; fifty-two or fifty-three hours, I don't know which.

[Submitting papers.] Please look at these papers, and see if you can find them. I hand you 6 G to 13 G, inclusive.—A. Yes, sir ; I have them all.

Where did you see them ?—A. In different portions of the county. I have seen them myself.

Have you seen them in California ?—A. Yes, sir.

Do you have anything to do with circulating them ?—A. I have seen one or three of them ; two as postmaster I know.

Do you know when they were circulated ?—A. They were circulated in 1878, in the fall, between July and November some time.

Are the people who sign them residents along the mail route, or not ?—A. They are residents of the county, not on the mail route.

What was done with these petitions ?—A. They were signed, and I have not seen them since.

To whom were they delivered when signed ?—A. I think to Mr. Hayes.

Was he ?—A. At that time he was subcontractor and then, I understood a few days ago, of Mr. Wade.

Did the number of trips on that route increase ?—A. It was increased from three trips a week.

Did the time decrease ?—A. The time was decreased.

What time ?—A. To twenty-six hours, although the four petitions called for thirty-eight hours, and the three petitions called for thirty hours.

TEN. Don't tell us anything more about that. We can read the papers.

MR. CRESS. I believe I am just answering the question.

TEN. No ; you are not.

MR. CRESS. Excuse me then.

Is there any application to your knowledge, made by people in the county, or on that mail route, to have the time twenty-six hours ?—A. No ; nobody ; no, sir.

Was it the result of a schedule of twenty-six hours as bearing no connection with other mail routes ?—A. It missed all the other schedules.

MR. SON. Oh, now, if your honor please, is that competent testimony ?

MR. CRESS. I think it can go in.

MR. SON. Well, let it go.

MR. CRESS. If they can show the improbability of anybody sending for such a schedule it is competent.

MR. SON. The truth of the whole matter is simply this, your honor, that the Post-Office Department gave the people twenty-six hours for less money than thirty-six hours would have come to at any rate, and they gave the Government and the people more facilities than they asked for at no additional expense.

MR. CRESS. We will see about that.

MR. SON. You will see it exactly that way. That is just exactly the case.

MR. CRESS. You need not argue the case now.

The COURT. That is very kind notice to you.

Mr. BLISS. Yes.

Mr. WILSON. I want to give them notice that that is the truth of this thing, and they can find it out in about fifteen minutes if they will look in the papers.

Mr. BLISS. We have looked in the papers considerably.

Mr. WILSON. I gave them notice of it in my opening.

Mr. MERRICK. You gave us several notices that turned out not to be accurate.

Mr. WILSON. I will trust the jury to vindicate me on that.

Q. When did you say you commenced to carry the mail ?—A. On the 14th of November, 1878.

Q. When you were carrying it once a week on a schedule of fifty-four hours how many carriers did you have ?—A. One man and three horses.

Q. When you carried it three times a week on a twenty-six hour schedule, how many men did you have ?—A. Three men.

Q. And how many horses ?—A. Twelve horses.

Q. You have continued to carry it since ?—A. I carry it yet ; yes, sir.

Mr. BLISS. That is all.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. Where do you say you reside ?—A. Oak Grove, San Diego County, California.

Q. Is this place where you reside on the Southern Pacific Railroad ?—A. No, sir.

Q. How far is it from the railroad ?—A. Sixty-five miles.

Q. How far is it from San Diego ?—A. Eighty-five miles.

Q. North of San Diego ?—A. It is northeast.

Q. [Exhibiting map.] You live in here [indicating], in this region of country ?—A. I live on the old Butterfield stage route ; the old emigrant road.

Q. When did you come to Washington ?—A. I came here, I think, about the 22d of May.

Q. Did you come by San Francisco or by the Southern Pacific by way of Yuma ?—A. I came by the Southern Pacific route.

Q. Is this the second trip you have made here ?—A. No, sir.

Q. This is the first trip ?—A. The first trip.

Q. All you know about this business is what you have told the jury since you have been on the witness-stand, is it ?—A. I have answered all the questions I was asked.

Q. You have been associated with Colonel Bliss considerably since you came here, have you not ?—A. I never met the gentleman in my life.

Q. Have you seen Mr. Woodward ?—A. I seen him in his office when I came and reported.

Q. How many times ?—A. That I cannot tell.

Q. A great many times, have you not ?—A. I kept no record of it.

Q. You witnesses report at Mr. Woodward's office pretty regularly, don't you ?—A. I reported there when I came from California.

Q. You commenced carrying this mail from Julian to Colton in 1878, I believe ?—A. Under this last contract, I believe.

Q. But in 1878. What time did you begin in 1878?—A. The 14th of November.

Q. And have been carrying it ever since?—A. I carry it yet; yes,

Q. Whom do you carry it for?—A. Well, when I done it I was carrying it for the subcontractor, Chauncey Hayes, but to my sorrow just few days ago I found out I am working for Mr. Wade—a gentleman that name.

Q. Do you know who he is?—A. I don't know.

Q. You mean Mr. Vaile?—A. Something like that; Henry M.

Q. You are carrying it one trip a week?—A. Three times.

Q. But when you began?—A. One when I began; yes, sir.

Q. On what schedule of time did you carry it?—A. Fifty-four hours.

Q. What is the distance?—A. One hundred and twenty-one miles.

Q. How many horses did you say you had?—A. Three horses and a man.

Q. Who took care of the horses?—A. Well, at the evening the rider took care of his own horse. In the daytime wherever the horse was out of course he was fed.

Q. If you happened to lack a horse at any time, I suppose you just hired one?—A. I got plenty of them myself.

Q. You have plenty of horses besides these mentioned?—A. Yes,

Q. So that if one gave out you had others to draw upon?—A. I had none to give out.

Q. They stuck it out?—A. Yes, sir.

Q. How many stations did you have?

THE WITNESS. I don't understand what you mean by stations. Do you mean where I kept my horses?

MR. WILSON. Yes; where you changed horses.

A. I kept them at Colton in the livery stable.

Q. You did not ride one horse all the way from Colton to Julian?—
I got three stations.

Q. How was it when you commenced with one trip?—A. Then I had no stations.

Q. You rode one horse forty miles, did you?—A. Yes, sir.

Q. And then the next one forty?—A. Yes, sir.

Q. And then the next one forty?—A. Yes, sir.

Q. And then when you got to the end of the last forty, and to the end of the one hundred and twenty miles, you turned around and rode that horse that had just gone forty miles back over the same forty miles?—A. Yes, sir.

Q. He stood it pretty well, did he?—A. Yes, sir; he got fat on it.

Q. And so you kept it up?—A. Yes, sir.

Q. How long did you keep it up that way?—A. Well, I got the same horses on the route yet.

Q. After awhile you got to circulating petitions for increasing the price down there?—A. I did not.

Q. You signed two or three?—A. I signed them; I didn't circulate them.

Q. There was no use in having those additional trips, was there?—
Not for my sake; I didn't care anything about it.

Q. The people did not either, did they?—A. I expect they did, or else they would not have signed the petitions.

Q. You didn't care about it, and yet you signed the petitions?—A.

I signed them. I would just as soon not sign them. It makes no difference to me.

Q. That was the way with most of the people down there, was it not?
—A. I don't know; I never asked anybody; I can't tell what the people said about it.

Q. There was not much use for those additional trips, was there?
A. I don't know anything about it.

Q. But still these petitions were circulated; what did you do with them?
—A. I signed two of them.

Q. Were they put in your hands?
—A. No, sir.

Q. You said somebody got them there?
—A. I believe the agent, Mr. Hayes. I think he was the gentleman that got them. I didn't know what would be done with them. I see them again now for the first time here.

Q. That was the last you knew of them?
—A. Yes, sir.

Q. After these additional trips were granted you still continued to carry the mail?
—A. Yes, sir.

Q. How many horses did you put on then?
—A. I put on twelve horses altogether.

Q. Now, what did you do that for when you only had three horses before?
—A. Well, we had to make three trips a week.

Q. But you would not want more than three times as many horses?
—A. The speed was increased.

Q. You had to go faster?
—A. I think so; about six miles an hour.

Q. Have you been keeping that up ever since?
—A. Yes, sir.

Mr. WILSON. I would like to have a copy of that last letting of this route.

Mr. BLISS. I haven't it here. It was taken out of my bag and not put back. I will see that it is put back.

Q. Have you seen the advertisement for the letting?
—A. Yes, sir; I have seen it.

Q. It is a twenty-six hour schedule, is it not?
—A. Thirty hours.

Q. Is it not twenty-six?
—A. No, sir; I have got the contract myself.

Q. You bid on that route?
—A. Yes, sir.

Q. You did not know exactly for whom you were carrying the mail, I believe?
—A. I don't know it yet.

Q. Who paid you?
—A. Mr. Hayes has paid me up to the last quarter; I don't know who is going to pay me for this quarter. I don't know anything about it.

Q. Did you have any trouble with that gentleman about your pay?
—A. I had to wait a good while.

Q. Before you got your money?
—A. Yes, sir.

Q. Did you finally get it?
—A. Yes, sir.

Q. Did you get all you wanted?
—A. No, sir.

Q. You had some trouble with him about it?
—A. Yes, sir.

Q. Did you have a lawsuit about it?
—A. No; I wouldn't have no lawsuit.

Mr. WILSON. You are sensible in that respect, I assure you.

Mr. MCSWEENEY. [*Sotto voce.*] Are you fishing for a job, Wilson?

Mr. WILSON. No; I don't want any job.

Q. Were you postmaster down there also?
—A. Before I got the mail I was.

Q. Not since?
—A. No, sir.

Q. When you were carrying the mail, were you postmaster?
—A. I have just told you I was not.

Q. When were you postmaster?—A. Before I carried the mail; before November 14, 1878.

Q. You were not postmaster since then?—A. No, sir.

THE COURT. A mail-carrier is a promotion from the post-office.

Q. Are you running it now in twenty-six hours?—A. Yes, sir.

Q. Were you subjected to any fines or deductions for failure to perform your service promptly?—A. Well, the first quarter as the petition reads thirty-six hours' schedule, and the telegram also from Mr. McKim was thirty-six hours, we started on the 14th of July, at thirty-six hours' schedule, and I lost the first quarter \$182.

Q. Did you not lose some other money by reason of your failure to comply with the schedule?—A. Yes, sir; I lost the first quarter in this year \$4, and the second quarter \$22, and the third quarter I lost \$255. It snowed in last winter. Besides that I never lost a penny.

Q. You made the time in twenty-six hours, did you?—A. Yes, sir.

By Mr. BLISS:

Q. You say you got snowed in. What do you mean?—A. In the night, with the mail.

Q. The snow was so deep you could not get through?—A. Yes, sir.

Q. And they fined you?—A. Yes, sir.

Q. And never have remitted it to you?—A. Two hundred and fifty dollars lost.

By Mr. WILSON:

Q. What quarter was that?—A. This quarter past; the third quarter of the year.

Q. In this year?—A. Yes, sir; commencing the new year; the 1st of January.

MR. BLISS. Commencing the 1st of January and ending the 30th of April.

By Mr. BLISS:

Q. You said, in reply to a question as to when you first carried the mail, "under this contract." Had you carried the mail before?—A. Under a previous contract; yes, sir.

Q. When was that?—A. From 1874 to 1878.

Q. All the time?—A. A portion of that time.

Q. How many trips was it then?—A. Once a week.

Q. What was the time?—A. The time was, I think, fifty-four hours. I do not know exactly, it was so long. I know it was once a week.

Q. You say you got the new contract?—A. Yes, sir.

Q. In how much time?—A. Thirty hours.

Q. How many trips a week?—A. Three trips.

Q. How much are you to get?

MR. WILSON. I object.

A. Three thousand four hundred and eighty-eight dollars per annum.

MR. WILSON. That testimony is not competent here.

MR. MERRICK. The counsel on the other side opened it.

MR. WILSON. I did not ask him what he got.

MR. MERRICK. You asked him whether he bid for it.

Q. How many men did you have when running three times a week on a schedule of twenty-six hours?—A. Three drivers.

Q. You came here under a subpoena, did you not?—A. Yes, sir.

THE COURT. And got a contract?

The WITNESS. Yes, sir.

Mr. BLISS. He made the contract before he came here.

The COURT. Are you going to call any more witnesses to-day?

Mr. BLISS. I think we have done penance enough for a little delay.

The COURT. You have gone over a good deal of ground, if you don't have to take a back track.

At this point (3 o'clock and 20 minutes p. m.) the court adjourned until to-morrow morning at 10 o'clock.

WEDNESDAY, JUNE 28, 1882.

The court met at 10 o'clock a. m.

Present, counsel for the Government, and for the defendants.

Mr. BLISS. I now offer the record of productiveness on route 38156, from Silverton to Parrott City.

Mr. WILSON. The reporter will please note an objection and exception.

Mr. BLISS. The gross revenue of the office at Silverton for the year ending June 30, 1881, was \$3,108.13; net revenue, \$2,008.13. For the office at Niccora there is no account, nor is there for the office at Cascade. The gross revenue for the office at Rockwood, for the period before named, was \$4.16; the net revenue, \$2.57. The gross revenue for the office at Hermosa was \$430.48; the net revenue, \$176.26. The gross revenue of the office at Animas City, for the same period, was \$2,121.93; the net revenue, \$1,280.93. The gross revenue of the office at Durango for the same period, was \$2,545.40; the net revenue, \$2,053.73. For the office at Fort Lewis the gross revenue was \$260.04; the net revenue, \$30. For the office at Parrott City the gross revenue was \$390.73; the net revenue, \$148.95.

The table, complete, is as follows:

Form of certificate.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, J. H. Ela, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this office, showing the net and the gross revenues of the post-offices located on route No. 38156, Silverton to Parrott City, Colorado, from July 1, 1878, to June 30, 1881.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, this 12th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.]

J. H. ELA,
Auditor..

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
n, Col	3 qr., 1878..	\$479 75		\$229 75	
	4 " " ..	303 82		109 91	
routes 38155, 38175, and 38188.....	1 " 1879..	290 95		143 70	
	2 " " ..	374 44		124 48	
		1,449 00		607 84	
	3 qr., 1879..	449 12		399 12	
	4 " " ..	781 67		531 67	
	1 " 1880..	407 58		157 58	
	2 " " ..	596 97		346 97	
		2,235 34		1,435 34	
	3 qr., 1880..	1,089 08		814 08	
	4 " " ..	662 31		387 31	
	1 " 1881..	438 25		163 25	
	2 " " ..	918 49		643 49	
		3,108 13		2,008 13	
, Colorado			No account		
, Colorado; also on route 38212; es-			No account		
hed June 14, 1880; discontinued April					
31; re-established May 11, 1881,					
od, Colorado	3 qr., 1878..	1 33		55	
	4 " " ..				
shed July 8th, 1878.....	1 " 1879..	22 04		4 97	
	2 " " ..	16 62		8 81	
		39 99		14 33	
	3 qr., 1879..	13 36		3 90	
	4 " " ..	30 27		18 83	
	1 " 1880..	35 45		19 87	
	2 " " ..				
		79 08		42 60	
	3 qr., 1880..	4 16		2 57	
	4 " " ..				
	1 " 1881..				
	2 " 1881..				
		4 16		2 57	
a, Col.	3 qr., 1878..	19 92		5 72	
	4 " " ..	39 97		18 66	
	1 " 1879..	42 48		21 97	
	2 " " ..	41 93		22 50	
		144 30		68 85	
	3 qr., 1879..	56 95		35 00	
	4 " " ..	63 44		40 18	
	1 " 1880..	58 07		28 87	
	2 " " ..	77 15		38 71	
		255 61		142 76	
	3 qr., 1880..	81 85		36 56	
	4 " " ..	105 80		48 64	
	1 " 1881..	122 83		54 19	
	2 " " ..	120 00		36 87	
		430 48		176 26	
City, Col.....	3 qr., 1878..	191 63		52 02	
	4 " " ..	136 27		51 23	
route 38145, 38174, and 38219	1 " 1879..	171 17		85 51	
	2 " " ..	144 01		58 94	
		643 08		247 70	
	3 qr., 1879..	150 82		70 20	
	4 " " ..	320 31		157 29	

Name of office.	Quarter.	Gross revenue.		Net revenue.	
	1 qr., 1880..	\$334 99		\$176 39	
	2 " " ..	257 25		129 04	
		1,063 87		532 92	
	3 qr., 1880..	452 54		238 18	
	4 " " ..	667 94		417 94	
	1 " 1881..	614 58		393 70	
	2 " " ..	386 88		231 11	
		2,121 94		1,280 93	
Durango, Col.....	3 qr., 1878..				
	4 " " ..				
Established Nov. 19, 1880.....	1 " 1879..				
Also on route 38145.....	2 " " ..				
	3 qr., 1879..				
	4 " " ..				
	1 " 1880..				
	2 " " ..				
	3 qr., 1880..				
	4 " " ..				
	1 " 1881..	663 55		421 88	
	2 " 1881..	1,881 85		1,631 85	
		2,545 40		2,053 73	
Fort Lewis, Col.....	3 qr., 1878..				
	4 " " ..				
Established October 5, 1880.....	1 " 1879..				
	2 " " ..				
	3 qr., 1879..				
	4 " " ..				
	1 " 1880..				
	2 " " ..				
	3 qr., 1880..				
	4 " " ..				
	1 " 1881..	99 32		41 34	\$37 88
	2 " 1882..	160 72		41 34	3 16
		260 04		41 34	41 04
			Less credits..	41 04	
			Total net.....	30	
Parrott City, Colorado.....	3 qr., 1878..	56 00		9 14	
	4 " " ..	42 55		7 10	
Also on routes 38145 and 38172.....	1 " 1879..	49 00		14 90	
	2 " " ..	42 00		15 32	
		189 55		45 76	
	3 qr., 1879..	60 00		20 11	
	4 " " ..	81 44		46 29	
	1 " 1880..	70 00		46 62	
	2 " " ..	82 97		24 50	
		294 41		117 52	
	3 qr., 1880..	128 12		54 70	
	4 " " ..	49 51		5 22	
	1 " 1881..	99 72		54 62	
	2 " " ..	113 88		34 41	
		390 73		148 95	

[The table last referred to was marked by the clerk 31 F.]

GEORGE M. SWEENEY, recalled.

By **Mr. BLISS**:

Question. Have you charge of the papers on mail route 46247, from Redding to Alturas, Cal.?—Answer. I have all that are now in the office of the Second Assistant Postmaster-General.

Mr. BLISS. I want to prove the papers on three or four of the routes.

The **COURT**. Are you through with the route from Julian to Colton?

Mr. BLISS. I believe I am substantially. I have no other witnesses.

Q. [Submitting a paper.] I show you a jacket dated December 3, 1878. In whose handwriting is the indorsement, if you know?

Mr. WILSON. Let the witness put his numbers on them as he identifies them.

A. The caption and the body of the order are in the handwriting of William H. Turner; the signature was written by General Brady, as also was "Do this—Brady."

[The witness then numbered the paper identified 1, and subsequently placed upon each paper identified the number given in brackets after his answer.]

Q. [Submitting another paper.] I show you a paper in the same jacket indorsed 1878, October 3?—A. Indorsed by Byron C. Coon. [2.]

Q. [Submitting another paper.] In the same jacket a paper indorsed 1878, October 3?—A. Indorsed by Byron C. Coon. [3.]

Q. [Submitting another paper.] In the same jacket a paper indorsed 1878, October 3?—A. Indorsed by Byron C. Coon. [4.]

Q. [Submitting another paper.] In the same jacket a paper indorsed December 3, 1878?—A. Indorsed by William H. Turner. [5.]

Mr. BLISS. There are three petitions here with no indorsement and bearing no stamp. [Not marked.]

Q. [Submitting another paper.] I show you a jacket indorsed July 31, 1878?—A. The date at the top is in the handwriting of William H. Turner. All the rest of the writing in red ink and the body of the order were written by Byron C. Coon, and the signature by General Brady. [6.]

Q. [Submitting another paper.] A paper in the same jacket indorsed July 8, 1878?—A. Indorsed by Byron C. Coon.

Q. What is the stamp?—A. That of the contract office, Post-Office Department. [7.]

Q. [Submitting another paper.] Here is a paper with no indorsement but a stamp?—A. It is the stamp of the contract office, Post-Office Department. [8.]

Q. [Submitting another paper.] I show you a jacket indorsed June 1, 1878?—A. The caption and body of the order are in the handwriting of William H. Turner. The signature was written by General Brady. [9.]

Q. [Submitting eleven papers.] I show you eleven papers, each indorsed April 12, 1879, in the same jacket?—A. They are all indorsed by William H. Turner. [10 to 20, both inclusive.]

Q. [Submitting another paper.] I show you a jacket indorsed April 17, 1880?—A. The caption and body of the order were written by William H. Turner, the signature by John L. French. [21.]

Q. [Submitting another paper.] I show you a jacket indorsed August 16, 1880?—A. The caption and body of the order were written by William H. Turner and the signature by John L. French. [22.]

Q. [Submitting another paper.] I show you a paper indorsed June 12, 1880?—A. Indorsed by William H. Turner. [23.]

Q. [Submitting another paper.] I show you a paper indorsed May, 19, 1880?—A. Indorsed by Byron C. Coon. [24.]

ary 11, 1880?—A. The caption and body of the order are in the handwriting of William H. Turner, and the signature in the hand of General Brady. [30.]

Q. [Submitting another paper.] I show you a jacket indorsed June 6, 1879?—A. The caption and body of the order are in the handwriting of William H. Turner, and the signature by Mr. Hazen.

Q. Who is Mr. Hazen?—A. The Third Assistant Postmaster. [31.]

Q. [Submitting another paper.] I show you a paper headed "General Order No. 10."—A. I don't know by whom this is indorsed; shall I number it?

Mr. BLISS. No; you need not number it.

Q. [Submitting another paper.] I show you a paper indorsed June 15?—A. Indorsed by Byron C. Coon. [32.]

Mr. BLISS. I now will show the witness the papers on file from Pueblo to Rosita, merely for the purpose of proving to you that the papers are in the handwriting of William H. Turner.

Q. [Submitting a paper.] I show you a paper indorsed September 1878?—A. Indorsed by Byron C. Coon. [1.]

Q. [Submitting another paper.] I show you a paper indorsed April 23?—A. Indorsed by Byron C. Coon. [2.]

Q. [Submitting another paper.] I show you a paper indorsed May 6?—A. The red ink indorsement is in the handwriting of Byron C. Coon. [3.]

Q. [Submitting another paper.] I show you a paper indorsed May 6, in red ink?—A. The red ink indorsement is in the handwriting of Byron C. Coon. [4.]

Q. [Submitting another paper.] I show you a paper indorsed May 5?—A. The indorsement is in the handwriting of Byron C. Coon. [5.]

Q. [Submitting another paper.] I show you a paper indorsed June 2d, 1879?—A. Indorsed by William H. Turner. [6.]

Q. [Submitting another paper.] I show you a jacket headed "State of Colorado."—A. The writing in red ink was done by William H. Turner; that in blue pencil by General Brady. [7.]

Q. [Submitting another paper.] I show you a paper indorsed June 11, 1880?—A. The caption and body of the order are in the handwriting of William H. Turner, and the signature in the hand of General Brady. [30.]

same jacket, headed 1879, May 6?—A. Indorsed by Byron C. Coon. [11.]

Q. [Submitting another paper.] I show you another paper in the same jacket, headed May 8th, 1879?—A. Indorsed by William H. Turner. [12.]

Q. [Submitting another paper.] I show you another paper in the same jacket, indorsed 1879, May 19?—A. Indorsed by Byron C. Coon. [13.]

Q. [Submitting another paper.] I show you a paper in the same jacket indorsed 1879, June 24?—A. By Byron C. Coon. [14.]

Q. [Submitting another paper.] I show you a paper in the same jacket unindorsed. What is the stamp?—A. The stamp of the office of the Postmaster-General. [15.]

Q. [Submitting another paper.] I show you a paper unindorsed, with figures, in the same jacket?—A. I think these figures were made by William H. Turner. [16.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, May 6?—A. The indorsement in red ink is in the handwriting of Byron C. Coon. [17.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, May 6?—A. The indorsement in red ink was made by Byron C. Coon. [18.]

Q. [Submitting another paper.] I show you another paper indorsed 1879, May 6?—A. The red-ink indorsement by Byron C. Coon. [19.]

Q. [Submitting another paper.] I show you another paper indorsed 1879, May 6?—A. The red ink indorsement is by Byron C. Coon. [20.]

Q. [Submitting another paper.] I show you another paper indorsed 1879, May 6?—A. Indorsed by Byron C. Coon. [21.]

Q. [Submitting another paper.] I show you a jacket indorsed October 22, 1879?—A. The caption and written part of the order were filled in by William H. Turner, and the signature is that of John L. French. [22.]

Q. [Submitting another paper.] I show you a paper in the same jacket. Do you recognize the indorsement?—A. I do not.

Q. What is the stamp?—A. That of the contract office, Post-Office Department. [23.]

Q. [Submitting another paper.] I show you a jacket indorsed 1880, May 14?—A. The red ink indorsement is in the handwriting of Byron C. Coon. [24.]

Q. [Submitting another paper.] I show you a paper indorsed 7, 16, '81?—A. Indorsed by me. [25.]

Q. [Submitting another paper.] I show you a jacket indorsed 1879, October 17?—A. The caption and body of this order are in the handwriting of Byron C. Coon. The signature was written by John L. French. [26.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, October 6?—A. Indorsed by Byron C. Coon. [27.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, May 6?—A. Indorsed by Byron C. Coon. [28.]

Mr. BLISS.. I now show the witness papers on route 38140, from Trinidad to Madison.

Q. [Submitting a paper.] I show you a jacket indorsed June 6, 1879?—A. The caption and body of the order are in the handwriting of William H. Turner. The signature is in the handwriting of General Brady. [1.]

Q. [Submitting another paper.] I show you a letter indorsed 1878, October 2?—A. Indorsed by Byron C. Coon. [2.]

14.
Q. [Submitting another paper.] I show you a paper indorsed by Byron C. Coon. [8.]

Q. [Submitting another paper.] I show you a paper indorsed by Byron C. Coon. [9.]

Q. [Submitting another paper.] I show you a paper indorsed by Byron C. Coon. [10.]

Q. [Submitting another paper.] I show you a paper indorsed by Byron C. Coon. [11.]

Q. [Submitting another paper.] There is nothing on this document where it came from?—A. Nothing but the subject-matter communication. Shall I number it?

Mr. BLISS. No.

Mr. WILSON. It ought to be numbered.

Mr. BLISS. Very well.

[The witness numbered the paper 12.]

Q. [Submitting a paper.] I show you a paper headed 1879—A. It was indorsed by Byron C. Coon. [13.]

Q. [Submitting another paper.] I show you a paper indorsed by Byron C. Coon. [14.]

Q. [Submitting another paper.] I show you a paper indorsed by Byron C. Coon. [15.]

Q. [Submitting another paper.] I show you a jacket indorsed by H. Turner; the caption and body of the order were written in blue pencil by George H. Turner. [16.]

Q. [Submitting another paper.] I show you a paper indorsed by William H. Turner. [17.]

Q. [Submitting another paper.] I show you a paper indorsed by Byron C. Coon. [18.]

Q. [Submitting another paper.] I show you a paper indorsed by Byron C. Coon. [19.]

Q. [Submitting another paper.] I show you another paper indorsed by Byron C. Coon. [20.]

ber 7, 1880?—A. The caption and body of the paper are written by William H. Turner, and the signature by General Brady. [24.]

Q. Do you recognize these several papers that I have shown you as ever having been in your possession?—A. They are a part of the files on the routes mentioned.

Q. When did you part with their possession?—A. I think it was the 7th day of September, 1881.

Q. To whom?—A. They were delivered either to Mr. Woodward, or to some one for him.

Q. In the same way as you have heretofore testified?—A. I think that all the papers that I have testified to were delivered on the same day.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. What you have said with reference to the papers on other routes is equally applicable to these, is it?

The WITNESS. In what particular?

Mr. WILSON. I mean with reference to your being able to identify them, and all that.

A. I identify them simply by the writing.

Q. What I mean is this: I have examined you with reference to whether or not there might have been other papers that are not here. What you have said with reference to those is equally applicable here, is it?—A. Yes, sir.

Mr. WILSON. That is all.

[The witness then left the stand.]

Mr. BLISS. I now offer in evidence the schedule of payments on route 46132, from Julian to Colton.

The schedule is as follows:

Statement and recapitulation of payments made to Dorsey, Miner and Peck, their subcontractors and assignees on nineteen routes below described.

Route No.	Termini.		State.	Pay accrued.	Fines and deductions, &c.	Remissions, &c.	Total payments.
	From—	To—					
46132	Julian	Colton	California	\$23, 190 21	\$204 21	.....	\$22, 986 00

Route No.		Termini.		Auditor's report.		Period for which paid.	Pay per quarter.	Less fines and deductions.	Amount of payment.	Warrant or draft.		To whom paid.	
From—	To—	State.	No.	Date.	No.	Date.				No.	Date.		
46132	Julian	Colton	California	31535	Dec. 4, 1878	3 qr., 1878	\$297 00	.....	\$297 70	W. 13491	Dec. 7, 1878	S. F. Austin, asst. cash.; B. U. Keyser, receiver.	Assignee.
			30237	Nov. 16, 1878	3 qr., 1878	.....	.....	.....	267 30	W. 12391	Nov. 19, 1878	J. C. Hays	Subcontractor.
			2607	Jan. 24, 1879	4 qr., 1878	.....	297 00	.....	297 00	W. 210	Feb. 6, 1879	H. M. Vaile	Assignee.
			11938	April 25, 1879	1 qr., 1879	.....	297 00	.....	297 00	W. 3159	Apr. 26, 1879	H. M. Vaile, J. A. J. Creswell.	Assignee.
			19209	July 19, 1879	2 qr., 1879	.....	297 00	.....	297 00	W. 6031	July 21, 1879	H. M. Vaile, Lewis Johnson & Co.	Assignee.
			28516	Oct. 24, 1879	3 qr., 1879	.....	1,954 71	\$182 81	1,771 90	W. 9348	Oct. 25, 1879	H. M. Vaile, W. N. Roach, cash.; J. A. J. Creswell, pres.	Assignee.
			4939	Feb. 2, 1880	4 qr., 1879	.....	2,227 50	.....	2,227 50	W. 853	Feb. 3, 1880	H. M. Vaile, Thos. C. Pearsall, cash.	Assignee.
			12958	April 27, 1880	1 qr., 1880	.....	2,227 50	.....	2,227 50	W. 3750	Apr. 28, 1880	H. M. Vaile, J. A. J. Creswell, pres.	Assignee.
			23442	July 30, 1880	2 qr., 1880	.....	2,227 50	.....	2,227 50	W. 7597	July 30, 1880	H. M. Vaile, Thos. C. Pearsall, cash.	Assignee.
			29220	Oct. 21, 1880	3 qr., 1880	.....	2,227 50	.....	2,227 50	W. 11179	Oct. 23, 1880	H. M. Vaile, Thos. C. Pearsall, cash.	Assignee.
			6674	Feb. 4, 1881	4 qr., 1880	.....	2,227 50	.....	2,227 50	W. 2941	Feb. 5, 1881	H. M. Vaile	Subcontractor.
			14111	April 29, 1881	1 qr., 1881	.....	2,227 50	.....	2,227 50	W. 5727	Apr. 30, 1881	H. M. Vaile	Subcontractor.
			22025	July 23, 1881	2 qr., 1881	.....	2,227 50	.....	2,227 50	W. 1158	July 28, 1881	H. M. Vaile	Subcontractor.
			31949	Oct. 27, 1881	3 qr., 1881	.....	2,227 50	4 27	2,223 23	W. 5370	Oct. 28, 1881	H. M. Vaile	Subcontractor.
			6383	Jan. 22, 1882	4 qr., 1881	.....	2,227 50	17 13	2,210 37	W. 1706	Feb. 3, 1882	H. M. Vaile	Subcontractor.
							23,190 21	24 21	22,986 00				

I finish now on Julian to Colton, and offer the contract on route 46247, between John M. Peck, as contractor, and the United States, from Redding, Cal., by Millville, Oak Run, Round Mountain, Burney Valley, Fall River Mills, Burgettville, Argusville, Bieber, Adin, Canby, and Clover Swale, to Alturas and back twice a week, at \$5,988 per year. The contract is executed by Peck and the Postmaster-General, and the oath is taken by Peck on the 11th day of May, 1878. The schedule is to leave Redding Monday and Thursday at 6 a. m., and arrive at Alturas in one hundred and eight hours; leave Alturas Monday and Thursday at 6 a. m., and arrive at Redding in one hundred and eight hours.

[The contract just referred to was submitted to the clerk to be marked, and was by him marked 1 H.]

The next paper is a jacket, which is as follows:

Date, June 3d, 1878. State, Cal.

Number of route, 46247.

Termini of route, Redding and Alturas.

Length of route, 179.

Number of trips per week, two.

Contractor, John M. Peck.

Pay, \$5,988 per annum.

Petitions inclosed signed by numerous citizens praying that service be increased to six trips per week, and that the running time be decreased to 72 hours. Advertised schedule, 108 hours.

Three times a week service last contract term.

That is in red ink. Now in black:

Increase service one trip per week from July 1st, 1878, and allow contractor \$2,994 per annum additional pay, being pro rata.

BRADY.

[The jacket just read was submitted to the clerk to be marked for identification, and was by him marked 2 H.]

Inclosed are petitions, the first of which is as follows:

SIR: The undersigned, your petitioners, citizens of Shasta, Lassen, and Modoc counties, in the State of Cal., would respectfully represent:

That the mail facilities for the section supplied by route No. 46254, old letting, and under new letting No. 46247, from Redding to Alturas, is totally insufficient for the wants of the community supplied thereby.

They would state that on the letting of the present contract the mail was carried semi-weekly and afterwards increased to tri-weekly, and which was still insufficient to accommodate the business and growing population of this section.

In the list of proposals now advertised they find that the above-named route from Redding to Alturas is reduced to a semi-weekly, which will work great injury to the business interests and inconvenience to the community supplied thereby.

Your petitioners feel that in justice to the present and increasing wealth and population of this section that route No. 46247, from Redding to Alturas, should be increased to six trips per week, each way, and the time reduced to 72 hours between those points, and for which your petitioners will ever pray.

To the SECOND ASSISTANT P. M. GENERAL,
Washington, D. C.

That is signed by a page and a half of petitioners, in double column.

[The petition just read was submitted to the clerk to be marked, and was by him marked 3 H.]

The next is a petition in the same terms, signed by a sheet and a half of petitioners.

Mr. WILSON. Why do you not read it?

Mr. BLISS. It is in precisely the same language, Mr. Wilson; I will read it if you say so.

Mr. WILSON. Go on.

[The petition just referred to was submitted to the clerk to be marked, and was by him marked 4 H.]

Your petitioners feel that in justice to the present and increasing want of this section that route No. 46247, from Redding to Alturas, should be increased to six trips per week and the time reduced to 72 hours between those points which your petitioners will ever pray.

TO THE SECOND ASSISTANT P. M.
Washington, D. C.

That is signed by eight or ten petitioners.

[The petition just read was submitted to the clerk to be read and was by him marked 6 H.]

The next is another petition in the same language, signed by three pages of petitioners, headed by a Mr. George H. Knight, postmaster.

[The petition just referred to was submitted to the clerk to be read and was by him marked 7 H.]

The next is another petition in the same language, signed by one and a half of petitioners.

[The petition just referred to was submitted to the clerk to be read and was by him marked 8 H.]

The next is another petition in the same words, I think, signed by one and a half of petitioners.

[The petition just referred to was submitted to the clerk to be read and was by him marked 9 H.]

The next is another petition in the same language, signed by one page of petitioners.

[The petition just referred to was submitted to the clerk to be read and was by him marked 10 H.]

The next is another petition in the same language, signed by three pages of petitioners, headed by Mr. John Wheatley himself as postmaster.

[The petition just referred to was submitted to the clerk to be read and was by him marked 11 H.]

The next is another petition in the same language, signed by one and a half of petitioners, including a person signing himself as postmaster.

[The petition just referred to was submitted to the clerk to be read and was by him marked 12 H.]

Date, December 3rd, 1878. State, Cal.

Number of route, 46247.

Termini of route, Redding and Alturas.

Length of route, 179 miles.

Number of trips per week, three.

J. M. Peck.

Pay, \$5,982 per annum.

Hon. J. K. Luntrell transmits a petition numerously signed, praying for three additional weekly trips on this route, and states:

I earnestly request that the prayer of petitioners be granted.

Postmaster at Alturas strongly urges the increase of service with expedited schedule.

This route was advertised twice a week, since increased one trip per week, on petitions very numerously recommending daily service, together with a reduction of running time to 72 hours. Present schedule, 108 hours.

Contractor presents affidavit concerning additional men and horses required to reduce schedule time from 108 to 72 hours.

Expedition	\$10,419 12 a year.
Three trips	19,401 12

Total increase.....	\$29,820 24
---------------------	-------------

Contractor submits a proposition to expedite schedule and increase service three trips per week, \$26,946 per annum additional pay, being less than pro rata.

All that is in red ink. Then in black ink:

Increase service three trips per week and reduce running time from 108 hours to 72 hours, and allow contractor \$26,946 per annum additional pay, being less than pro rata, but in accordance with his agreement, from December 16th, 1878.

BRADY.

Across the back of that order, indorsed in red pencil:

Do this.

BRADY.

[The jacket just read was submitted to the clerk to be marked, and was by him marked 14 H.]

Inclosed in that jacket is a letter, which is as follows:

To the Hon. ASSIST. P. M. GENERAL,
Washington, D. C.:

Application for mail service six times a week from Redding, Shasta Co., Cal., to Alturas, Modoc County, Cal., is, in my opinion, a proper one at this time on account of the country traversed by said route, the settlements already made thereon and the impetus it will give to the settlement of such an extensive country. For we know that people of means and intelligence are loath to emigrate to a country that is deprived of frequent and rapid communications with the old and thickly settled portions of the country.

Respectfully,

C. C. BUSH, P. M.

REDDING, Aug. 17th, 1878.

[The paper just read was submitted to the clerk to be marked, and was by him marked 15 H.]

The next is a letter, and is as follows:

POST-OFFICE, ALTURAS, CAL.,
Aug. 12th, 1878.

To the Hon. SECOND ASSISTANT P. M. GENERAL,
Washington, D. C.:

I hereby recommend the increase of service from three trips per week to six trips per week, and the reduction of schedule time from 108 hours to 72 hours on route No. 46247, from Redding to Alturas, California.

The proposed change of schedule time and increase of service is imperatively de-

manded by the growing wealth and population of this section, and would be of great benefit to the people.

N. B. RINE, P. M.

[The letter just read was submitted to the clerk to be marked, and was by him marked 16 H.]

The next is a petition, and is as follows:

To the Hon. SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C. :

We, the undersigned citizens, residing on mail route No. 46247, from Redding, California to Alturas, California, respectfully petition for an increase of mail service on said route, increasing the service from three trips per week to six trips per week, believing the same to be necessary on account of the large increase of population on said route. All of which is most respectfully submitted.

That is signed by three pages of petitioners.

[The petition just read was submitted to the clerk to be marked, and was by him marked 17 H.]

The next is another petition in the same language, signed by five pages of petitioners.

[The petition just referred to was submitted to the clerk to be marked, and was by him marked 18 H.]

The next is a petition, and is as follows:

To the Hon. SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C. :

We, the undersigned, citizens and residents on mail route No. 46247, from Redding, California, to Alturas, in California, respectfully petition to the Post-Office Department to reduce the time of schedule by expediting the time from 108 hours to 72 hours. We think by reducing the schedule would be a benefit to the Government by increasing of the mail on the above-named route. All of which is most respectfully submitted.

That is signed by five or six pages of petitioners.

Pasted to it is another petition with the same heading. The two petitions run together.

[The petition just read and the one referred to were submitted to the clerk to be marked, and were by him marked 19 H.]

The COURT. Well, those are enough.

Mr. BLISS. Then there is an indorsemen there which should be read:

I request that the prayer of petitioners be granted.

J. K. LUTTRELL,
M. C., Cal.

There is an indorsement also on 18 H, as follows:

I earnestly request that the prayer of the petitioners be granted.

J. K. LUTTRELL,
M. C., Cal.

The COURT. Is it worth while to read any more petitions?

Mr. BLISS. I have got through with the petitions.

Mr. WILSON. [Indicating.] I wish you would show this map to the jury so that they will understand the route, Colonel.

Mr. BLISS. I have no objection to your showing it.

[Mr. Wilson here exhibited to the jury the post-office map for 1877, containing post-routes in California and Nevada, and explained the location of the terminal points and the direction of the route.]

Mr. WILSON. If you have no objection, Colonel, I will show them the route from Julian to Colton at the same time.

Mr. BLISS. I have no objection.

[Mr. Wilson then submitted the same map to the jury and to the court, and made a similar explanation with reference to the route from Julian to Colton.]

Mr. BLISS. In the same jacket is the oath of the contractor:

CHICO SPRINGS, N. M.,
Sept. 18th, 1878.

THOS. J. BRADY,
Second Assist. P. M. General :

The number of men and animals necessary to carry the mail on route 46247, from Redding to Alturas, California, on the present schedule is three men and eight animals. The number of men and animals necessary to carry the same mail on a schedule of 72 hours is six men and eighteen animals.

JOHN M. PECK,
Territory of New Mexico, County of Colfax, ss :

On the 18th day of Sept., 1878, personally appeared the above John M. Peck, and, being duly sworn, deposes that the above statement is true, as he verily believes.

J. S. TAYLOR,
Notary Public.

That has already been marked 53 A, when identified by the notary. I do not know whether it should be marked again or not.

Mr. WILSON. What do you want to do with it ?

Mr. BLISS. To put it in.

Mr. WILSON. What for—well, go ahead.

Mr. BLISS. We have had that question up so many times, that I did not suppose it would come up again. [Submitting oath to the court.] I ask your honor to look at the numbers where they have been erased and written over. Hold it up to the light.

The next is a letter, and is as follows :

WASHINGTON, D. C.,
3rd Dec., 1878.

THOS. J. BRADY,
Second Assist. P. M. General :

SIR: I hereby offer to carry the mail on route No. 46247, Redding to Alturas, California on a schedule of seventy-two hours for an increased compensation, including three additional trips, of twenty-six thousand nine hundred forty-six dollars per annum.

Respectfully,

JNO. M. PECK.

[The paper just read was submitted to the clerk to be marked, and was by him marked 20 H.]

Mr. INGERSOLL. I would ask the court is this a special letting, without reference to the expedition ?

The COURT. I do not know.

Mr. INGERSOLL. I object to the papers, if this is a special letting without reference to the expedition. I do not know what it is myself. Does the court know what it is ?

The COURT. The court does not know.

Mr. INGERSOLL. Then I object to it. I object to any papers about any special letting, because there is nothing of that kind in the indictment.

Mr. BLISS. I do not know what is meant by special letting, sir. There appears on this jacket which I read this order :

service three trips per week and allow contractor \$26,946 per annum additional in accordance with his written agreement, from December 1877.

BRADY

INGERSOLL. The letter is introduced, saying that he offered to take the mail for so much money, at such a rate. If that was accepted as a contract, and the horses and men have nothing to do about it one way or the other; so I object to that. I object to the introduction of the affidavit or anything about it, and I object to it for the further reason that there is not one word on that subject in the indictment. I only charge upon this route the frauds and fraudulent petitions, communications, and, secondly, a false and fraudulent order. Now, in order to sustain the charge of false and fraudulent petitions, they have introduced twenty or thirty petitions that they admit to be genuine. The next thing is this affidavit. I say that it throws no light upon the conspiracy. It does not tend to show, one way or the other, whether they did or did not conspire. For that reason I object to it. The COURT. We have gone too far in that direction to make a change now. We must go on.

Mr. INGERSOLL. All right.

Mr. BLISS. The next is a jacket, which is as follows:

Date, July 31, 1878. State, Cal.
Number of route, 46247.

Termini of route, Redding and Alturas.
Length of route, 179.
Number of trips per week, three.
Contractor, John M. Peck.
Pay, \$8,982.
Sched. desired as below.

That is in red ink. Now in black:

L. Redding Mon., Wed., & Frid. at 6 a. m.
A. Alturas Frid., Sun., and Tues. by 12 m.
L. Alturas Mon., Wed., & Frid., at 6 a. m.
A. Redding Frid., Sun., & Tues. by 12 m.
Change as above.

BRADY.

[The jacket just read was submitted to the clerk to be marked, and was by him marked 21 H.]

The next is a schedule, and is as follows:

SCHEDULE.

The undersigned postmasters and contractors recommend the following departures and arrivals on mail route number 46247, State of California.

Leave Redding Monday, Wednesday, and Friday at 6 a. m. each day.

Arrive at Alturas Friday, Sunday, & Tuesday at 12 m. each day.

Leave Alturas Monday, Wednesday, and Friday at 6 a. m. each day.

Arrive at Redding Friday, Sunday, and Tuesday at 12 m. each day.

C. C. BUSH, P. M. at Redding.

N. B. RINE,

J. M. PECK,

By MAJOR & CULVERHOUSE,

Contract

Dated Redding, June 13th, 1878.

[The paper just read was submitted to the clerk to be marked and was by him marked 22 H.]

The next is a letter, and is as follows :

Lauer, dealer in groceries, wines and liquors, tobacco & cigars, crockery, dry goods, clothing, boots and shoes, hats, hardware, tinware, notions, etc., etc.]

ALTURAS, CAL., June 21st, 1878.

A., Redding :

DEAR SIR: I have kept the letter attached to inclosed schedule for future reference, and I need it. If not right let me know, and I will return.

Yours,

N. B. RINE, P. M.

The paper just read was submitted to the clerk to be marked, and as by him marked 23 H.]

The next is a jacket, which is as follows :

Date, April 17th, 1880. State, California.

Number of route, 46247.

Termini of route, Redding and Alturas.

Length of route, 179 miles.

Number of trips per week, six.

Contractor, J. M. Peck.

Pay, \$35,928.

Subcontractors, M. Major & J. Culverhouse.

Postmaster-General directs that the service on this route be reduced three trips per week.

That is in red ink; now, in black :

From May 1, 1880, reduce service three trips per week, and deduct from contractor's \$17,964 per annum, being pro rata, and deduct from subcontractor's pay \$10,500 per annum, being pro rata, and allow contractor and subcontractor one month's extra on service dispensed with.

FRENCH.

The paper just read was submitted to the clerk to be marked, and as by him marked 24 H.]

The next is a paper which is as follows :

Date, Aug. 26th, 1880. State, Cal.

Number of route, 46247.

Termini of route, Redding and Alturas.

Length of route, 179 miles.

Number of trips per week, three.

Contractor, John M. Peck.

Pay, \$17,964 per annum.

Subcontractor, J. N. Major & Jerrey Culverhouse.

Pay, \$10,500 per annum.

Petitions inclosed numerously signed by citizens living on and receiving mail from this route, asking for a restoration of 6 times a week service. Six times a week service recommended by Hon. J. T. Farley, U. S. S., Hon. Newton Booth, U. S. S., Hon. C. P. Berry, M. C., Hon. R. Pacheco, M. C., Hon. H. F. Page, M. C., and Hon. Horace D. M. C., of California; and Hon. James H. Slater, U. S. S., and Hon. John Whiteaker, U. S. S., of Oregon. There are twelve offices on this route that would be benefited by increase of service petitioned for. Offices in Southeastern Oregon would also be benefited by six times a week's service, as this is the nearest line of communication with Redding, northern terminus of the railroad.

Hon. C. P. Berry states that this route and route number 46246, Redding to Roseburg, are the two most important routes in Northern California.

Three trips will cost pro rata \$17,964 per annum additional.

All that is in red ink. Now in black :

From Sept. 1, 1880, increase the service three trips per week, and allow contractor \$17,964 per annum additional pay, being pro rata, and allow subcontractors \$10,500 per annum additional pay, being pro rata.

FRENCH.

Postmaster-General directs that the service on this route be reduced three week.

Then follows the order.

From May 1st, 1880, reduce service three trips per week, and deduct from tor's pay \$17,964 per annum, being pro rata, and deduct from subcontractor \$10,500 per annum, being pro rata, and allow contractor and subcontractor on extra pay on service dispensed with.

Fi

Now, that is put in evidence against us.

Mr. MERRICK. We read that.

Mr. WILSON. I know you did. Now, then, immediately after seems—

The COURT. [Interposing.] Immediately after it, you say.

Mr. WILSON. I will show you how long it was afterwards. It is dated the 7th of April, 1880. Now, on the 26th of August, I Postmaster General having thus taken off three trips, here come two Senators from California, and Mr. Berry, Mr. Pacheco, Mr. and Mr. Davis, members of Congress from California, and Mr. the Senator from Oregon, and Mr. Whiteaker, the member of C from Oregon, and ask that these three trips be put back—

The COURT. [Interposing.] And three more added?

Mr. WILSON. Oh, no. They had taken off three.

Mr. MERRICK. There were six.

Mr. WILSON. Hold on a minute now. We can keep this tidily straight. They had taken off three by order of the Post General, signed by French.

The COURT. I understand that.

Mr. WILSON. And the precise sum that was deducted from tractor and subcontractor was named in the order of the Post General. Now, then, upon these petitions and letters and resolutions in August following those three trips were added as the pay was restored exactly as it was when the Postmaster reduced it, and that is signed by French. Now, I think the ju

The COURT. Of course the increase of trips was a proper allowance.

Mr. BLISS. We make no question about that, sir.

Mr. WILSON. Yes, sir; but I want it understood that the difference that there was between the pay that the contractor got and what the subcontractor got was known to the Postmaster-General, and he acted upon that, and if there is any point in that I want that thing to be understood.

The COURT. The jacket shows it.

Mr. MERRICK. The jacket shows that plainly enough.

The COURT. With regard to the acts of public officers the presumption is that they acted rightly, unless the contrary is shown. There is no question about that.

Mr. BLISS. The next paper is a jacket, and is as follows:

Date, August 6th, 1879. State, Cal.

Number of route, 46247.

Termini of route, Redding and Alturas.

Length of route 178 miles. D. C.

Number of trips per week, six.

Contractor, John M. Peck.

Pay, \$35,928 per annum.

Subcontractor transmits second subcontract.

That is in red ink. Now in black:

Amend order bearing date October 1st, 1878, (No. 8596), so as to pay subcontractors at the rate of \$21,000 per annum from August 1, 1879, to June 30, 1882, and in case of increase of service to seven trips per week, payment to be made at the rate of \$23,000 per annum.

HAZEN.

[The jacket just read was submitted to the clerk to be marked, and was by him marked 26 H.]

Inside of that jacket is the subcontract between John M. Peck, and Major & Culverhouse, dated May 20, 1879, by which the said Major & Culverhouse undertook to carry the mail. Originally it read \$5,500 per annum for two trips a week, and \$7,500 per annum for three trips per week, which are stricken out in red ink. Against those erasures are put the initials "M. C. R." and "M. & C." and then this contract provides for six trips a week at \$21,000 per annum, and seven trips a week at \$23,000 per annum. And then:

And it is further agreed that should the P. O. Department reduce the schedule time to 36 hours in summer, and sixty hours in winter, the party of the first part shall pay the second party the sum of four thousand in addition to above specified sum, or in that ratio for any reduction of schedule time.

[The paper just read was submitted to the clerk to be marked, and was by him marked 27 H.]

Mr. WILSON. If your honor please, I do not want to be making objections to this testimony, but when they are introducing orders made by Mr. Hazen, the Third Assistant Postmaster-General, I would like to know what the tendency of it is.

Mr. BLISS. I do not care to introduce the orders except for the purpose of putting the subcontract in.

Mr. WILSON. It has nothing to do with the case.

Mr. BLISS. What—the jacket?

Mr. WILSON. Yes, sir.

Mr. BLISS. I do not think it has. I think the subcontract has.

Mr. WILSON. Well, put them all in.

Mr. BLISS. The contract is in the ordinary form signed by John M. Peck, contractor, by M. C. Rerdell, attorney in fact, and J. W. Dorsey.

The COURT. That is the point of it.

Mr. WILSON. [Facetiously.] We had better plead guilty, then, and end this thing.

Mr. MERRICK. I think you had, too.

Mr. BLISS. That is all of the record I desire to put in.

JOHN NEWTON MAJOR sworn and examined.

By Mr. BLISS :

Question. Where do you live ?—Answer. I live in Redding, Shasta County, California.

Q. How long have you lived there ?—A. I have lived in Redding five years.

Q. Have you at any time had anything to do with carrying the mail on the route from Redding to Alturas ?—A. Yes, sir.

Q. When ?—A. From 1878 to 1880.

Q. What part of 1878 ?—A. From July 1.

Q. Were you in partnership with anybody ?—A. I was in partnership with Mr. Culverhouse.

Q. How were the mails carried on that route ; in what conveyances ?—A. In what we called stage wagons.

Q. How many horses ?—A. Two on some portions of the route, and four on some portions of the route.

Q. Did the stages carry passengers ?—A. Yes, sir.

Q. And express matter ?—A. Yes, sir.

Q. Now, from the time you commenced to carry the mail in July, 1878, and during the remainder of the year, what time did you take in going over the route from one end to the other ?—A. We went through in about forty-four hours.

Q. After that time, and in the winter of 1878 and 1879, how much ?—A. We consumed about the same time.

Q. During 1879, and until you ceased your connection with it in 1880, how much ?—A. About that time.

Q. Forty-four hours ?—A. Yes, sir ; forty-one, forty-two, and along there.

Q. Was the time any longer in winter ?—A. Yes, sir ; we consumed about sixty-five hours.

Q. So that from July, 1878, until the time you left the service the time was about forty-four hours in summer and sixty-five hours in winter ?—A. Yes, sir.

Mr. BLISS. That is all, your honor. The schedule was one hundred and eight hours. Expedition was paid for bringing it down to seventy-two hours. It was always carried in seventy-two hours before expedition.

Mr. INGERSOLL. We do not object to that.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. Were you running a stage line across there ?—A. Yes, sir.

Q. For whom did you carry the mail ?—A. J. M. Peck.

Q. Did you take a subcontract from J. M. Peck ?—A. Yes, sir.

Q. What time did you take that ?—A. I think it was on the 20th of May, 1878, when we made the contract.

Q. You were running your stage line at that time ?—A. No, sir.

Q. When did you commence running your stage line ?—A. The first day of July.

Q. You are pretty well acquainted with the country through there, are you?—A. Yes, sir.

Q. What kind of a country does that road run through?—A. It runs through a mountainous country.

Q. What kind of a valley is that from Redding to Alturas?—A. It is a big valley. Burney Valley is the first valley that you come to. The mountains run through there all the way up to that point.

Q. Until you come to the valley. What kind of a country is it in that valley?—A. Pretty good.

Q. How is the balance of the way to Alturas?—A. Pretty fair.

Q. Have a good many people settled in there?—A. Yes, sir.

Q. State whether that is the route that is traveled going up into Oregon through Redding.—A. To Eastern Oregon.

Q. Now, you put on a stage line there after you got this subcontract and you run your stages faster than the schedule called for for carrying the mail?—A. Yes, sir.

Q. So that you were actually carrying these mails to the people through that country and up into Eastern Oregon more rapidly than the Government had contracted to have them carried?—A. Yes, sir.

Q. And how often did you carry the mails; did you carry them on all your coaches?—A. Yes, sir.

Q. How many times a week did you run your coaches from the beginning?—A. Three times a week.

Q. At the beginning?—A. Yes, sir.

Q. Did you commence running them oftener than three times a week after that?—A. Yes, sir.

Q. What time did you do that?—A. I don't remember what time it was; I don't remember the month. I think it was in May, about the 8th.

Q. About the 18th of May of what year; 1879?—A. Yes, sir; 1879.

Q. How many times did you run, then, from the 18th of May, 1879?—A. Six times a week.

Q. You commenced running six times a week, then, when the increased trips of mail was required?—A. Yes, sir.

Q. But you still kept up your fast time on your schedule?—A. Yes, sir.

Q. And you were carrying passengers, and express matter, &c.?—A. Yes, sir.

Q. Well, the whole of this is, then, that you were carrying the mail faster than the Government contract required?—A. Yes, sir.

Q. And the contract was afterwards changed so as to pay you for what you were actually doing for the Government?—A. Yes, sir.

Q. And that is all there is of it?—A. Yes, sir.

Q. How long have you been here?—A. Since the 28th of May.

Q. Were you here before the grand jury?—A. No, sir.

Q. I would like to ask you as to the extent of the mail, the weight of the mail that you carried over that route?—A. When I was carrying it three times a week, I presume it would average three hundred or three hundred and fifty pounds. I don't know exactly.

Q. That was when you carried it three times a week. Now, when you carried it six times a week, how was it?—A. That divided the mail.

Q. And made it lighter?—A. Yes, sir.

Q. Was there any of this third and fourth class matter went over that route?—A. Yes, sir.

Q. These merchandise packages?—A. Yes, sir.

clerk in the Post-Office Department, let them produce it, and not object to it.

Mr. MERRICK. You asked him the question that opened up the matter.

Mr. WILSON. No, I did not. I asked him if the Government paid him for the service it got.

Mr. MERRICK. Paid him for what he was doing. We prove that it paid him something in addition, and paid Mr. Peck much more.

Mr. WILSON. That does not make any difference.

Mr. MERRICK. We will show what difference it makes.

The COURT. I do not think the question ought to be put.

Mr. MERRICK. Does your honor rule the question out?

The COURT. Yes.

By Mr. BLISS:

Q. [Submitting a paper to witness.] Please look at that subcontract and tell me if that is the one made with you?—A. [After examining the same.] Yes, sir.

Q. That is the subcontract under which you worked?—A. Yes.

The COURT. You have got it in.

Mr. WILSON. That has been read in evidence.

The COURT. It shows what his compensation was.

Mr. BLISS. It was put on file the 6th of August, 1879. The compensation allowed is for six trips a week, \$21,000 per annum; for eight trips a week, \$23,000 per annum, to the subcontractor. The exhibit shows that the contractor got \$41,900.

Mr. TOTTEN. Now he has got it out, your honor.

Mr. INGERSOLL. Now we all feel easy.

JAMES McCORMICK sworn and examined.

By Mr. BLISS:

Question. Where do you reside?—Answer. Redding, Shasta County, California.

held any?—A. I went to Redding in July, 1873, during the Modoc war, and—

Q. [Interposing.] Were you in the post-office prior to becoming post-master?—A. I was appointed deputy.

Q. For how long?—A. Up to 1880.

Q. When were you first appointed?—A. Some time in September, 1873.

Q. Were you familiar with the mail route and carrying of the mail on that route from July, 1878?—A. Yes, sir.

Q. By whom were the mails carried?—A. Major and Culverhouse.

Q. How were the mails carried?—A. They were carried with a sulky and a two-horse wagon—a passenger coach.

Q. In what time were they carried over that route; how many hours?—A. I think the shortest time was forty-two hours.

Mr. TOTTEN. Tell us what you know, not what you think.

The WITNESS. Forty-two hours.

Mr. TOTTEN. You know that?

The WITNESS. Forty-two hours.

By Mr. BLISS:

Q. [Resuming.] What was the longest time?—A. Seventy-two hours, and sometimes a little later than that on account of storms.

Q. When they made failures?—A. Yes, sir.

Q. Was the actual time of travel changed between July, 1878, and the spring of 1880?—A. Yes, sir.

Q. What was the change in the actual time—I do not mean the schedule time, but the actual time?—A. That was the time, forty-two hours. Before that the actual time of getting in, to the best of my recollection now, was sixty hours.

Q. Before what; when was it sixty hours' time of getting in?—A. That was in the winter.

Q. In the winter time they took sixty hours?—A. Yes, sir.

Q. And in the summer time forty hours?—A. Forty-two hours.

Q. And that was so right along, was it?—A. Yes, sir.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. You reside where?—A. At Redding.

Q. How long have you been here?

The WITNESS. In this town?

Mr. WILSON. Yes.

A. I came here on the 28th day of May.

Q. How far is Redding from Washington?—A. About twenty-seven hundred miles.

Q. Were you before the grand jury?—A. I was not.

Q. The substance of this whole matter is this, is it not, that the Government at first wanted the mails carried in one hundred and eight hours, and afterwards reduced it to seventy-two hours?—A. That was the contract.

The COURT. He has not been examined about that.

Mr. WILSON. That is just what he has been examined about.

The COURT. He has been examined about the time it took to run over the route.

Mr. WILSON. Very well.

Q. [Resuming.] They ran the stages over that route from forty-two to sixty hours, according to the time of year?—A. Yes, sir.

Q. And the Government got the mail carried at that speed?—A. Yes, sir.

Q. That is the whole of it, is it?

The COURT. That is all that he has proved.

Mr. MERRICK. That is what he has proved.

Q. [Resuming.] Did you ever see Brady out there?—A. No; I did not.

Q. Do you know General Brady?—A. I know him now.

Q. Do you know Mr. Turner?—A. I do not.

Q. What time did you say you became postmaster?—A. The 5th of October, 1880.

Q. That was the first connection you had with the post-office there, was it?—A. Yes, sir. I was assistant postmaster for several years before that.

Q. Did you ever communicate, either as deputy or postmaster, to the Post-Office Department that these stages were running through there in from forty-two to sixty hours?—A. I cannot recollect that I did.

Q. You do not know that the Post-Office Department knew anything about the time that these stages were making, do you?—A. I do not.

Q. You never saw Brady, or Turner, or Postmaster-General Key out there on that route?—A. No, sir.

By Mr. DICKSON: [The foreman.]

Q. Were you not required, as postmaster, to report to the department the time that the mails were received?—A. Yes, sir.

Q. Did you not, then, state the hours?—A. Yes, sir. I gave the hours of arrivals and departures.

Q. Was not that fact known to the Post-Office Department?—A. Within seventy-two hours. As a general rule, the schedule time was complied with.

Q. Was there any way that the Post-Office Department here knew that the mail was being carried less than seventy-two hours, from your reports?—A. Yes, sir; they could have told from the reports; but they never had any written instructions, outside of the reports from me. That is the question that was asked me.

By Mr. WILSON:

Q. How is that?—A. You asked me if I had ever written the department regarding the time of arrivals.

Q. You simply reported the arrivals and departures at your end of the route?—A. I report that daily and also monthly.

Q. Did you report any failures to the department?—A. I always reported failures.

Q. Did you report daily before the mail was expedited?—A. I think that the reports date back about a year and a half.

Q. From now?—A. From now.

Q. Was there any way, before the expedition, by which the Post-Office Department could know the time that was occupied in carrying the mails—before it was expedited, recollect, is my question?—A. I do not think they could. In making out my report, the time of arrival was within seventy-two hours; starting from Alturas, for instance, at four o'clock, and arriving at Redding in seventy-two hours, and leaving Redding in the morning, and arriving in seventy-two hours at Alturas.

Q. So that there was nothing in your reports prior to the expedition by which they could tell whether it was being carried in less than

ty-two hours?—A. It might have been in there, but I did not
 ler it necessary to put it in there.

Is not this the fact now: That they adopted the mail bill for the
 se of enabling them to know whether the expedition was being
 med or not?—A. Yes, sir.

Now, until the adoption of that mail bill they had no means of
 ing whether the expedition was being performed or not, had they?

BLISS. I object to so broad a question as that. Let him ask if
 had means within his knowledge.

COURT. He must speak from his own knowledge.

WILSON. I am not asking him to speak from anything else.
 I think not. Now if the mail arrives at seven o'clock in the even-
 mark it at seven o'clock.

I am not talking about that. I am talking about the time prior
 expedition?—A. I have no recollection of writing anything by
 they would know.

But the reports you made would not show whether it was being
 d faster than the schedule time or not?—A. My impression is that
 s correct.

BLISS. The record of productiveness of this route, for the year
 g June 30, 1881, I offer as before.

WILSON. Wait one minute. As to Mr. Major, we cannot exam-
 m now further than simply as to what is pertinent on cross-ex-
 ation. We wish to examine him further in relation to some other
 rs in reference to this case, therefore we desire that he shall not
 ay.

COURT. Give him notice.

MERRICK. They can summon him.

WILSON. Mr. Major is in court.

MERRICK. That is true enough, but he is here on the part of the
 d States, and at the expense of the United States.

BLISS. We are through with him.

COURT. [To Mr. Wilson.] He is not obliged to stay unless you
 on him.

TOTTEN. Then we will ask your honor for a subpoena.

COURT. You do not have to ask the court for that.

TOTTEN. Then we ask the clerk.

BLISS. The table of productiveness is as follows:

Form of certificate.

OFFICE OF THE AUDITOR OF THE TREASURY
 FOR THE POST-OFFICE DEPARTMENT.

H. Ela, Auditor of the Treasury for the Post-Office Department, do hereby cer-
 e annexed to be a true and correct statement from the records of this office,
 g the gross and the net revenues of the post-offices located on route No. 46247,
 g to Alturas, California, from July 1st, 1878, to June 30th, 1881.

stimony whereof I have hereunto signed my name, and caused to be affixed my
 office, at the city of Washington, this 12th day of June, in the year of our Lord
 usand eight hundred and eighty-two.

—]

J. H. ELA,
Auditor.

Name of office.	Quarter.	Gross revenue.		Net revenue.	
Redding, Cal	3 qr., 1878..	\$319 81		\$160 27	
	4 " " ..	323 79		153 36	
Supplied by railroad and by routes 46245 and 46246.	1 " 1879..	229 90		61 24	
	2 " " ..	316 36		134 12	
		1,190 04		511 12	
	3 qr., 1879..	335 37		156 43	
	4 " 1879..	349 37		154 62	
	1 " 1880..	336 80		152 51	
	2 " " ..	320 56		148 64	
		1,402 10		652 44	
	3 qr., 1880..	362 51		160 54	
	4 " " ..	416 43		210 79	
	1 " 1881..	321 49		129 91	
	2 " " ..	461 11		243 09	
		1,561 54		744 51	
Loomis, Cal	3 qr., 1878..	8 79		6 80	
	4 " " ..	4 29			
Established April 11, 1878.....	1 " 1879..	10 92		4 17	
Discontinued May 14, 1879.....	2 " " ..	12 99		9 46	
		36 99		20 43	
			Less credit...	32	
				19 85	
Millville, Cal.....	3 qr., 1878..	134 66		57 33	
	4 " " ..	121 97		51 30	
Also, on route 46242	1 " 1879..	190 16		115 24	
	2 " " ..	134 92		62 99	
		581 71		286 86	
	3 qr., 1879..	170 63		96 35	
	4 " " ..	156 11		72 72	
	1 " 1880..	223 51		139 52	
	2 " " ..	181 77		97 32	
		737 02		412 02	
	3 qr., 1880..	167 38		95 24	
	4 " " ..	182 75		98 02	
	1 " 1881..	182 23		110 40	
	2 " " ..	134 24		63 94	
		666 60		367 64	
Oak Run, Cal.....	3 qr., 1878..	10 81		6 97	
	4 " " ..	17 38		9 06	
	1 " 1879..	24 25		13 14	
	2 " " ..	26 33		14 61	
		78 47		43 60	
	3 qr., 1879..	24 21		16 29	
	4 " " ..	45 48		33 42	
	1 " 1880..	36 20		23 12	
	2 " " ..	30 37		22 21	
		136 46		95 04	
	3 qr., 1880..	15 30		7 96	
	4 " " ..	24 15		14 93	
	1 " 1881..	39 43		27 05	
	2 " " ..	81 07		20 25	
		109 95		70 24	
Round Mountain, Cal.....	3 qr., 1878..	7 11		6 85	
	4 " " ..	10 21		7 64	

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
	1 qr., 1879..	\$12 67	.....	\$12 73	.....
	2 " " ..	10 51	.....	11 13	.....
	3 qr., 1879..	17 66	.....	6 85	.....
	4 " " ..	16 98	.....	7 64	.....
	1 " 1880..	21 34	.....	12 73	.....
	2 " " ..	22 25	.....	11 13	.....
		78 23	.....	38 85	.....
	3 qr., 1880..	17 87	.....	7 86	.....
	4 " " ..	10 38	.....	2 69	.....
	1 " 1881..	17 40	.....	10 55	.....
	2 " " ..	22 79	.....	8 80	.....
		68 44	.....	29 09	.....
Y Ferry, Cal.....			No account		
ney, Cal.....	3 qr., 1878..	25 06	.....	14 95	.....
	4 " " ..	25 34	.....	15 40	.....
	1 " 1879..	31 91	.....	19 03	.....
	2 " " ..	26 98	.....	13 58	.....
		109 29	.....	62 41	.....
	3 qr., 1879..	41 54	.....	24 36	.....
	4 " " ..	42 59	.....	27 60	.....
	1 " 1880..	52 46	.....	36 78	.....
	2 " " ..	41 22	.....	27 34	.....
		177 81	.....	116 08	.....
	3 qr., 1880..	37 01	.....	23 34	.....
	4 " " ..	39 48	.....	26 47	.....
	1 " 1881..	44 62	.....	30 12	.....
	2 " " ..	67 81	.....	50 57	.....
		188 42	.....	130 50	.....
Mills, California.....	3 qr., 1878..	\$95 30	.....	\$53 88	.....
	4 " " ..	122 90	.....	62 80	.....
	1 " 1879..	146 87	.....	96 96	.....
	2 " " ..	148 29	.....	148 29	.....
		513 36	.....	361 93	.....
	3 qr., 1879..	195 64	.....	135 96	.....
	4 " " ..	176 89	.....	22 04	.....
	1 " 1880..	211 24	.....	149 73	.....
	2 " " ..	169 58	.....	128 22	.....
		753 35	.....	435 95	.....
	3 qr., 1880..	173 01	.....	134 56	.....
	4 " " ..	83 80	.....	45 92	.....
	1 " 1881..	179 23	.....	154 99	.....
	2 " " ..	145 18	.....	102 66	.....
		561 22	.....	438 13	.....
lle, California.....	3 qr., 1878..	49 49	.....	31 59	.....
	4 " " ..	44 85	.....	27 64	.....
	1 " 1879..	29 10	.....	12 52	.....
	2 " " ..	36 36	.....	19 52	.....
		159 80	.....	91 27	.....
	3 qr., 1879..	49 82	.....	26 65	.....
	4 " " ..	53 15	.....	29 86	.....
	1 " 1880..	47 79	.....	26 77	.....
	2 " " ..	66 79	.....	45 99	.....
		217 55	.....	129 27	.....
	3 qr., 1880..	38 20	.....	20 00	.....
	4 " " ..	40 00	.....	23 67	.....
	1 " 1881..	55 22	.....	38 43	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Pittville, California..... Established September 30, 1878.,.....	2, qr., 1881..	\$48 95	.....	\$32 46	.....
		182 37	.....	114 56	.....
	3 qr., 1878..		.....		.....
	4 " " ..	15 88	.....	12 62	.....
	1 " 1879..	53 12	.....	36 36	.....
	2 " " ..	71 37	.....	48 58	.....
		140 37	.....	97 56	.....
	3 qr., 1879..	89 31	.....	63 09	.....
	4 " " ..	86 85	.....	58 82	.....
	1 " 1880..	111 12	.....	79 25	.....
	2 " " ..	93 00	.....	65 64	.....
		380 28	.....	266 80	.....
	3 qr., 1880..	89 00	.....	61 84	.....
	4 " " ..	103 05	.....	73 04	.....
	1 " 1881..	90 00	.....	64 38	.....
	2 " " ..	84 05	.....	57 26	.....
		366 10	.....	256 52	.....
Argusville, California..... Discontinued March 22, 1878..... Bieber, Cal; also on routes 46288, 46321 and 46207.			No account.		
	3 qr., 1878..	61 89	.....	34 00	.....
	4 " " ..	43 79	.....	17 49	.....
	1 " 1879..	68 44	.....	38 97	.....
	2 " " ..	81 09	.....	52 89	.....
		255 21	.....	143 95	.....
	3 qr., 1879..	82 02	.....	42 34	.....
	4 " " ..	85 90	.....	47 81	.....
	1 " 1880..	96 10	.....	50 09	.....
	2 " " ..	63 06	.....	31 16	.....
		327 08	.....	171 40	.....
	3 qr., 1880..	92 00	.....	52 93	.....
	4 " " ..	94 79	.....	54 87	.....
	1 " 1881..	93 65	.....	48 40	.....
	2 " " ..	110 46	.....	60 29	.....
		390 90	.....	217 09	.....
Adin, Cal.....	3 qr., 1878..	157 08	.....	64 56	.....
	4 " " ..	214 50	.....	128 70	.....
	1 " 1879..	239 11	.....	153 44	.....
	2 " " ..	252 92	.....	167 56	.....
		863 61	.....	514 26	.....
	3 qr., 1879..	295 17	.....	206 77	.....
	4 " " ..	222 48	.....	122 74	.....
	1 " 1880..	265 67	.....	174 29	.....
	2 " " ..	213 82	.....	183 50	.....
		197 14	.....	643 30	.....
	3 qr., 1880..	180 34	.....	81 01	.....
	4 " " ..	123 68	.....	40 12	.....
	1 " 1881..	162 41	.....	79 58	.....
	2 " " ..	193 97	.....	112 12	.....
		660 40	.....	312 83	.....
Lillian, Cal., established June 9, 1881..... Canby, Cal.			No account.		
	3 qr., 1878..	20 61	.....	13 17	.....
	4 " " ..	12 39	.....	5 29	.....
	1 " 1879..	26 52	.....	17 30	.....
	2 " " ..	19 00	.....	7 06	.....
		78 52	.....	33 42	.....
	3 qr., 1879..	20 00	.....	10 88	.....
	4 " " ..	24 25	.....	14 12	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Totten; discontinued Feb. 27, 1878. Cal.; also on routes 46207 and 42302.	1 qr., 1880..	\$17 75	.....	\$3 51	.....
	2 " " ..	23 50	.....	14 57	.....
		85 50	.....	43 09	.....
	3 qr., 1880..	30 75	.....	16 30	.....
	4 " " ..	38 75	.....	27 91	.....
	1 " 1881..	16 61	.....	7 99	.....
	2 " " ..	34 14	.....	21 64	.....
		120 25	.....	73 84	.....
			No account ..		
	3 qr., 1878..	109 02	.....	13 69	.....
	4 " " ..	191 27	.....	127 47	.....
	1 " 1879..	241 58	.....	170 00	.....
	2 " " ..	269 38	.....	187 44	.....
		811 25	.....	498 60	.....
	3 qr., 1879..	210 43	.....	203 86	.....
	4 " " ..	146 09	.....	49 39	.....
	1 " 1880..	245 74	.....	145 31	.....
	2 " " ..	196 32	.....	81 92	.....
		798 58	.....	480 48	.....
	3 qr., 1880..	255 80	.....	130 84	.....
	4 " " ..	225 94	.....	95 70	.....
	1 " 1881..	296 10	.....	167 95	.....
	2 " " ..	215 57	.....	74 37	.....
		993 41	.....	868 86	.....

TOTTEN. I suppose this testimony goes in under our exception. cept to it generally.

COURT. Yes, it goes in now because the same kind of testimony ne in before.

table of productiveness just read was marked by the clerk 28 H.]

BLISS. I now offer the schedule of payments up to the fourth r, 1881. The gross pay for the period was \$114,062.91; less de- ns, \$2,055.40; net amount, \$112,007.51.

schedule is as follows :

t and recapitulation of payments made to Dorsey, Miner, and Peck, their subcon- tractors and assignees on nineteen routes below described.

Termini.		State.	Pay accrued.	Fines and de- ductions, &c	Remissions, &c.	Total pay- ments.
From—	To—					
Redding ..	Alturas.....	California	\$114, 162 91	\$2, 055 40	.....	\$112, 007 51

Route No	Terminl.		Auditor's report.		Period for which paid.	Pay per quarter.	Less fines and de- ductions.	Amount of pay- ment.	Warrant or draft.		To whom paid.	
	From—	To	No	Date.					No.	Date.		
46247	Redding ..	Alturas ..	31535	Dec. 4, 1878	3 qr., 1878	\$2,245 50	...	\$370 50	W. 13491	Dec. 7, 1878	S. P. Austin, ass't cash.; B. W. Key, ser., receiver.	Assignees.
			30337	Nov. 16, 1878	3 qr., 1878	...	...	1,875 00	W. 12502	Nov. 19, 1878	Major & Culverhouse.	Subcontr'ors.
			26107	Jan'y 24, 1879	4 qr., 1878	3,417 07	...	1,515 06	W. 210	Feb. 6, 1879	H. M. Valle	Assignees.
			2612	Jan'y 24, 1879	4 qr., 1878	...	...	2,201 00	W. 261	Feb. 7, 1879	Major & Culverhouse	Subcontr'ors.
			11938	April 25, 1879	1 qr., 1879	8,988 00	...	5,832 00	W. 3159	April 26, 1879	H. M. Valle J. A. J. Creswell, pres.	Assignees.
			12108	April 25, 1879	1 qr., 1879	...	172 17	3,577 83	W. 3676	May 2, 1879	Major & Culverhouse.	Subcontr'ors.
			19210	July 19, 1879	2 qr., 1879	8,982 00	...	5,832 06	W. 6083	July 21, 1879	S. W. Dorsey, Mid- dleton & Co.	Assignees.
			19211	July 19, 1879	2 qr., 1879	...	80 02	3,563 98	W. 6080	July 21, 1879	Major & Culverhouse.	Subcontr'ors.
			31291	Nov. 4, 1879	3 qr., 1879	8,982 00	...	4,937 43	W. 10087	Nov. 5, 1879	H. W. Dorsey, Don- nell, Lawson & Co.	Assignees.
			31292	Nov. 4, 1879	3 qr., 1879	...	...	4,744 57	W. 11085	Nov. 18, 1879	Major & Culverhouse.	Subcontr'ors.
			2410	Jan. 24, 1880	4 qr., 1879	8,982 00	...	8,782 00	W. 12982	Jan. 24, 1880	S. W. Dorsey, J. W. Boaler.	Assignees.
			2409	Jan. 24, 1880	4 qr., 1879	...	504 00	4,746 00	W. 40	Jan. 26, 1880	Major & Culverhouse.	Subcontr'ors.
			16363	May 14, 1880	1 qr., 1880	...	...	3,732 00	W. 5348	May 17, 1880	S. W. Dorsey, J. W. Boaler.	Assignees.
			16364	July 30, 1880	2 qr., 1880	...	480 23	4,789 77	W. 5896	May 26, 1880	Major & Culverhouse.	Assignees.
			23040	July 30, 1880	2 qr., 1880	7,468 55	...	2,481 26	W. 7882	Aug. 12, 1880	J. W. Boaler	Assignees.
			23622	July 30, 1880	2 qr., 1880	...	143 45	1,496 90	W. 7881	Aug. 12, 1880	John M. Peck	Contractor.
			30895	Oct. 27, 1880	3 qr., 1880	5,955 46	...	2,346 94	W. 8038	Aug. 4, 1880	Major & Culverhouse	Subcontr'ors.
			30927	Feb. 7, 1881	4 qr., 1880	...	...	1,506 00	W. 11005	Oct. 29, 1880	J. W. Boaler	Assignees.
			6832	Feb. 7, 1881	4 qr., 1880	...	...	508 40	W. 11006	Oct. 29, 1880	John M. Peck	Contractor.
			6831	May 20, 1881	1 qr., 1881	8,982 00	...	3,490 98	W. 13110	Nov. 11, 1880	Major & Culverhouse	Subcontr'ors.
			16843	May 20, 1881	1 qr., 1881	...	...	3,732 00	D. 3503	Feb. 7, 1881	J. W. Boaler	Assignees.
			22689	July 25, 1881	2 qr., 1881	10,479 00	...	5,198 20	W. 2247	Feb. 11, 1881	Major & Culverhouse	Subcontr'ors.
			23670	Nov. 8, 1881	3 qr., 1881	...	...	4,175 11	W. 7369	May 21, 1881	J. W. Boaler	Assignees.
			34230	Nov. 8, 1881	3 qr., 1881	10,479 00	...	4,859 99	W. 7370	May 21, 1881	Major & Culverhouse	Subcontr'ors.
			34234	Feb. 6, 1882	4 qr., 1881	10,479 00	...	4,729 00	W. 1232	Aug. 1, 1881	J. W. Boaler	Assignees.
			34235	Feb. 6, 1882	4 qr., 1881	...	...	8,750 00	W. 1313	Aug. 1, 1881	Major & Culverhouse	Subcontr'ors.
			34236	Feb. 6, 1882	4 qr., 1881	...	...	4,729 00	W. 11718	Nov. 25, 1881	J. W. Boaler	Assignees.
			34237	Feb. 6, 1882	4 qr., 1881	...	...	5,750 00	W. 12310	Nov. 29, 1881	Major & Culverhouse	Subcontr'ors.
			34238	Feb. 6, 1882	4 qr., 1881	...	...	4,729 00	W. 665	Feb. 11, 1882	J. W. Boaler	Assignees.
			34239	Feb. 6, 1882	4 qr., 1881	...	...	5,724 50	W. 264	Feb. 11, 1882	Major & Culverhouse	Subcontr'ors.
			34240	Feb. 6, 1882	4 qr., 1881	...	...	112,007 51				
			34241	Feb. 6, 1882	4 qr., 1881	...	...	112,007 51				

I have here a series of orders for the warrants. Those that I desire to call attention to are the ones dated August 2, 1880: Receipt for warrant, 1881, signed John M. Peck, contractor; receipts for warrants, November, 1879, signed by J. M. Peck, by Darnell, Lawson & Co., assignees; receipts for August 9, 1880, November 10, 1880, November 1, 1880, and May 1, signed J. W. Bosler, assignee. The other receipts are signed Major & Culverhouse. There are ten signed by them.

[The papers just referred to were submitted to the clerk to be marked for identification, and were by him marked from 29 H to 44 H, both inclusive.]

This is all of that route as far as I know, sir.

I propose to take up next route 38134, from Pueblo to Rosita. Here are the maps of this route. [Maps distributed to counsel and to the jury.]

I first offer in evidence a letter with this significant heading:

COLORADO STATE PENITENTIARY,
WARDEN'S OFFICE,
Cañon City, August 30th, 1878.

SECOND ASSISTANT POSTMASTER-GENERAL,
Post-Office Department, Washington, D. C.:

SIR: I understand that there is a petition in circulation to have the schedule changed on the route from Pueblo to Rosita, from once a week, as it now is, to three times a week. You are aware there is now a daily mail from Pueblo to Rosita, by way of Cañon City, and all the mail for Rosita goes and comes by way of Cañon City, and would continue to do so if there was a daily mail from Pueblo to Rosita by way of Greenwood. The object in having the service increased is not to better accommodate the people, but for the increased pay.

Yours, truly,

M. N. MEGRUE,
Contractor, Route No. 38132.

[The paper last read was marked by the clerk 1 I.]

Mr. WILSON. What route is 38132?

Mr. BLISS. I have not the remotest idea.

NEW YORK, April 22, 1879.

General T. J. BRADY,
Second Assistant Postmaster-General, Washington, D. C.:

DEAR SIR: If you have not already done so, I ask that the mail service from Pueblo to Rosita be made seven times a week, with quick time. The extraordinary development of the mining interest at Silver Cliff and Rosita have attracted a great many people, and it seems to me the Government owes to them to furnish proper mail facilities.

I earnestly recommend early and favorable action.

I am, respectfully yours,

J. B. CHAFFEE.

[The paper last read was marked by the clerk, 2 I.]

DENVER, COLORADO, April 25, 1879.

Hon. D. M. KEY, P. M. General:

SIR: Numbers of people are going into the Rosita and Silver Cliff mining region daily, and later on it is thought their numbers will increase. I write this to urge an increase in the mail service from Pueblo to Rosita to seven times a week, with fast time.

I trust you will be able to put this service on immediately.

Very respectfully,

FREDERICK W. PITKIN,
Governor of Colorado.

On the back is the following indorsement:

Referred to P. M. G.

JAMES B. BELFORD.

[The paper last read was marked by the clerk 3 I.]

DENVER

SIR: The mail from Pueblo to Rosita ought to run daily should be reduced.

That part of our State is now attracting thousands of mail facilities are absolutely imperative.

I hope you will have it made daily immediately.

Very respectfully,

HE

WI

Asst

Hon. T. J. BRADY,
Second Asst P. M. General.

[The paper last read was marked by the clerk

Pu

Hon. T. J. BRADY,
2nd Asst. P. M. General, Washington, D. C.:

SIR: The people of Pueblo and the flourishing mining of a daily mail between the two towns, and from the best valley towns in the State in point of population the people are entitled to this benefit, and if consistent take it as a great favor if you will at an early day establish a route, and order service thereon.

I have the honor to be, very respectfully, your obedient

[The paper last read was marked by the clerk

The COURT. If you have any more petitions care about hearing them on your side.

Mr. BLISS. I am simply reading them in pursuance of the order. At the outset we would do.

The COURT. The presumption is that the Government was right; and these papers which show orders that were made, it seems to me, are not to be produced.

Mr. BLISS. We only need to produce them in order, to prevent them from saying that we have not. If your honor tells us not to produce them we will not.

The COURT. The best way to get at the truth is to let the strength of his own case, and to omit evidence which will make out your case is all that you need produce.

Mr. WILSON. Now, if your honor please—

The COURT. [Interposing.] I have considered the matter, and it is in the interest of time that I make this presumption that the act of the department allowing the suspension of service and the increase of service is right.

Mr. INGERSOLL. Unless they show the contrary.

The COURT. And the other side must show so.

Mr. WILSON. Will your honor allow me just a moment. What has just been read here now shows the necessity of reading these petitions. Colonel Bliss started with the fact that he was going to read a letter which was very significant; what he meant by that I cannot say.

The COURT. That is the only piece of evidence. [Laughter.]

Mr. WILSON. I think that is so.

The COURT. I speak of these petitions. They are the ones which I think he ought to introduce. When you come

mony it will be time enough to show the facts that I know you are about to state. What you are going to say is not called for now.

Mr. WILSON. All right. It would have given me a great deal of pleasure just to have knocked that man of straw down.

The COURT. I know you want to knock that thing on the head immediately.

Mr. WILSON. Right now. I could do it so easily.

The COURT. Your time has not come.

Mr. WILSON. I will have to bide my time. It would not take me two minutes.

Mr. MERRICK. You must wait until your time comes. I thought myself it was not our duty to put in the defense, and it was a useless waste of time to read these papers; but when the other side commenced to complain of our withholding papers, I made the statement that I would read every paper upon which the Postmaster-General could, by any possibility, have acted. Mr. Bliss and I have done this for extraordinary care, and not because we thought it was right.

The COURT. I think that is not the right way. I think the way to get at the truth is for both parties to contend for the opposite as hard as they can. Let each party contend for its own side, and use its own efforts.

Mr. TOTTEN. Would it not be well for us to come back to the indictment and examine what we are charged with and have some testimony on that point? We are charged with an unlawful combination to defraud the United States. Had we not better get to that?

The COURT. I think probably we would have got to that before this time if it had not been for the introduction of so much evidence on your side by the Government.

Mr. TOTTEN. They ought not to take our honors away from us.

The COURT. I will have the justice to say that their motives were correct. They are prosecuting and they do not want a conviction unless the Government is entitled to it. It was on that account and in fairness that they proposed to introduce all the documentary evidence which the department afforded. But I see now that there is a great deal of time wasted in reading these petitions, and I want to economize a little. We have spent almost a month now. The court began to select a jury on the first day of this month I believe, and commenced the trial on the second, and if we go on at the rate and in the way that we have been going in the past, I do not see but what it will take three months to try the case; and it appears to me that the most expeditious method is therefore that the Government shall confine itself to its own testimony. One of the counsel for the defense intimated the other day that when the Government gets through they would probably have a motion to make. Now, if there is a failure on the part of the Government, after producing all of its own testimony, to establish a conspiracy in this case, the court, of course, would entertain and act upon the motion to which the counsel referred the other day, and the case might be shortened. But, according to the way we are going now, trying both sides at once, of course it will take us longer to arrive at the end of the case of the prosecution. I want to know what the prosecution are going to make out with their own evidence, and not with yours, so that I can see, in view of their evidence, what sort of a case they have made by their own testimony. It is economy of time, therefore, and a simplification of the method to have now only the case of the prosecution.

Mr. CARPENTER. Will the court allow me one word? It seems to

me that the suggestion of the court can be met at the same time by the counsel putting in evidence the jackets, and reading only such as they choose. That is fair.

The COURT. That is the idea that I entertain. I will put in evidence such papers as tend to make out their case.

Mr. CARPENTER. That is not quite my idea. I want to put in all the papers in the jackets upon which I rely, and then read such as they choose. It is proper that they should because every paper that is in that jacket is a part of the case. They need not read them, but let them be put in evidence and let them have them.

Mr. INGERSOLL. Allow me to say one word, your honor, in court but a minute. Here is a public officer socially liable for his action. Let us suppose a judge is charged. What would the court say if, on the trial of that charge being that he had corruptly decided in favor of a defendant in the court below, the witness testified only of a defendant in the court below that he had not one word that had been testified on the part of the defendant that he acted properly, and then to say, "This is our verdict, that he acted corruptly. If you want to see what the plaintiff can come in afterwards." It seems to me that that is not the mode of trial. In order to impeach that judge, the court would have to introduce all the evidence that was introduced in the case. It would have to be an absolute, complete record in the case. In this case they say that General Brady gave the order, and thereupon they bring forward that order was made, and they introduce some papers showing that two or three men have said, "We do not want that order." That forty petitions signed by hundreds of people want the order. Now, is it for them to introduce the order was corrupt, or must they show the entire case show the corruption? I insist that in the case of the semi-judicial acts of a public officer, the entire circumstances, the entire facts within which he acted; and then it is for the jury to say whether or not he was corrupt. It seems so to me. In this case, in this instance, there is a postmaster or a contractor writes and says, "You ought not to expedite this order." They introduce the order and then the letter from that contractor. They introduce all these petitions! Have they made out a case? If they are to be impeached on the evidence simply of one side, they will have to go in, I insist, upon which the order was made.

Mr. CHANDLER. Let me say one word, if you please, your honor. The whole essence of this conspiracy is in these petitions. They pretend that there is any conspiracy, except in the false communications. They say that the Government of the United States was conspired to be defrauded of its money by the means of these false papers which they have introduced. If they abandon these petitions and undertake to prove the evidence of defrauding the Government of the United States apart from this indictment; and if they have got the petitions and in these communications of fraud against the Government of the United States; if these petitions are true in fact, they characterize them; then the proof of the means of defrauding the Government was alleged to be defrauded fails utterly, and

dismissed. I say they cannot turn their back upon these petitions and letters and communications, inasmuch as the only conspiracy they complain of is a conspiracy by virtue of these particular specified means to defraud the Government of the United States. So far as they have gone, all these means have a counter effect from what they have alleged them to possess. They are all truthful instead of false; they are all genuine instead of counterfeit. That being the case, and there being no other complaint of means by which the Government was to be defrauded, except through these false petitions and papers, there is no proof to sustain this case whatever, and it should be now dismissed.

The COURT. The court cannot dismiss a case as long as the prosecution continues to give evidence. They charge the manufacture of false paper. The court is not obliged to call upon them to produce true papers.

Mr. CHANDLER. But papers to support their case.

The COURT. The court says to them, "You have charged in the indictment that false petitions and papers have been made up, and false oaths have been taken, by which the Government was to be defrauded." In order to sustain the indictment, I do not think they are bound to produce anything but what is false. I would not call upon them, therefore, to produce true papers. I would leave that for the other side. The prosecution may introduce only such papers as they think will sustain or tend to sustain the indictment on their side. That is the usual course, and I see that there is time consumed in taking any other.

Mr. MCSWEENEY. Then, in order to test this matter, I move that that letter be stricken out that they read impugning this route and its expedition. It is not a false paper. That man wrote a letter against the propriety of this route. Now, if it is a truthful paper, out it goes. If it is simply a reason, then the bane and antidote should go together.

The COURT. The court has decided that question long ago.

Mr. MCSWEENEY. As to that letter?

The COURT. The question that covers that letter. It is in this way, that, so far as the charging part of this conspiracy goes, they are at liberty to make out a combination, and they are at liberty to prove the fraudulent character of the conspiracy, and are not confined simply to the papers referred to in the indictment. They may introduce proof to show bad faith and combination.

Mr. MCSWEENEY. I am not on that.

The COURT. Here is a paper that you say is genuine.

Mr. MCSWEENEY. They say so.

The COURT. If that paper be genuine, and was a paper sent to the Second Assistant Postmaster-General to put him on his guard against allowing a large sum of money for expedition on this route, that would tend to show that he made a fraudulent and improper allowance in favor of his friends, although the paper is a genuine paper, and not referred to in the indictment.

Mr. MCSWEENEY. It gets its introduction here because it is in a jacket. We want to cross-examine the jacket and unharness so much of the suit. I admit there is not much more to this suit than a jacket; the balance of the clothing is wanting. But they ought to let us examine the whole of the jacket.

The COURT. You have the whole of the jacket.

Mr. MCSWEENEY. The court says that some time we may use it. That is my objection.

Mr. INGERSOLL. We want to use it on cross-examination.

Mr. MCSWEENEY. There are no sides literally in a criminal trial.

The judge, the jury, and the counsel are all supposed to be friends of the court and friends of the accused.

The COURT. No; counsel are not supposed to be—

Mr. MCSWEENEY. [Interposing.] There are no sides. They are all fighting for the liberty of the citizen. It does not seem to me that we ought to wait for the remainder of the contents of the jacket until our side comes. Suppose in the case of a forgery of a paper they ask the witness on the stand, "Is that the signature of the party?" "No." You might just as well prohibit them from asking anything further as not to let us ask for the contents of this jacket entire. The question should be, "If it is not your signature, still did you not authorize it to be done by him?" Would the court say, "Not at all" it is enough for the prosecution to get what they want, and six weeks afterward you may recall the witness and ask him if permission was given to the prisoner to use that signature." You might just as well, it strikes me, say in such a case, "Wait; the prosecution is making out the case against you." Now, they say in a jacket there is a letter that says, "Don't expedite; don't do something or other;" but there are in that same jacket three hundred signatures to petitions asking for that very thing. Will you simply produce that letter, on the doctrine of saving time and say wait six weeks before we can go into the balance of the jacket and at the end of six weeks we may put in those petitions; that we cannot put them in now, overwhelming as they are. I say the bane and the antidote should go together when they come from the jacket. That is my objection to apportioning this case in such a way as if it were a civil suit as to the payment for a bushel of corn, proving your account and then waiting until the defendant comes to prove payment. I object to the philosophy of such a trial of a prisoner at the bar for his liberty. We look upon the jacket as a unit, and when it contains one letter which says, "Don't do this thing," and a great many more letters that do say it, the first letter upon one side and the others upon the other side, they ought all to come in together. Suppose upon one side of the paper the man had said, "Don't do this," and then upon the other side he had said, "I have changed my view; I think you ought to expedite this route;" and suppose when the first side is read we endeavor to read the other side, and they say, "Hold on; we know that on one side of the letter he says, 'Don't do it.' That is for the prosecution. That is all they have got to do." I want to turn that letter over and give what is on the other side. "Oh, no," they say, "wait six weeks, and then turn the letter over on the other side." It appears to me that if there is a jacket with a letter saying, "Don't do this," and we have got a whole lot of letters from governors and all that class of men who say, "Do this," that the whole should not be excluded on the doctrine of economy of time. I am as much interested in saving time as your honor can be, because I have my little business and my little affairs off in my little, humble home that I want to get to just as much as anybody wants to get out of this court-house; but on the doctrine of saving time by this course, especially in view of what might come before your honor on the question as to whether there is a conspiracy to go to the jury by way of a proof of overt acts, it seems to me that this is not the proper way. It would take just as long then as now, brother Chandler suggests. I apologize for taking so much time as I have spent in making these remarks.

The COURT. If the whole road had to be traveled over it might take as long then as it would now. But it may not take more than half the time in a certain contingency. In regard to the illustration that you

just gave of the proof of a paper before a jury, I think it will not sustain the argument you have made. A paper is introduced by a plaintiff in a case and proved. They say, "That is a forged paper." Will the court interrupt the course of proceeding and allow the defendant to introduce his testimony at that point? Of course not. They go through with the prosecutor's side of the case first. The court has held here that all these documents in the department are very different in their character, taken together, from the record of a suit in court where the pleadings relate to one subject, the issue is one, and the evidence relates to one matter. There at length a conclusion is reached by a decree or judgment, which is binding upon all the parties. There the whole record must go together. Here anybody may write to the Postmaster-General. All the people in the United States have that privilege. Orders were given there by various parties, so there is nothing in the nature of a record, from a judicial point of view, connected with the proceedings in the departments. There are papers that are utterly useless; unintelligible papers, manifestly, upon which no proceedings could be had, and no proceedings did take place. For that reason it was that the court, at an early stage of this trial, laid down the rule that the plaintiff was not obliged to give in evidence all those papers; that the court would not compel them to read them all, but only such as would suit the part of the prosecution in the first instance, and might suit the defense in the other. Some of these papers are not proper evidence for either side, and could not be. It is necessary that the court on the presentation of these several papers should decide whether they are competent evidence, taking each one by itself. I think it is already indicated that the prosecution should be limited in the first place to the presentation of its own case. We will see more distinctly when they get through with their testimony what their case amounts to, and the defense will then see what it is called upon to meet. The defense ought not to be obliged to rely upon evidence produced by the prosecution, or to ask the prosecution to introduce their evidence for them. The orderly way in a court of justice to get at the truth is for each side to introduce its own testimony to the exclusion of the testimony on the other side, and for each counsel on each side to do the best he can to present the strength of his own case and not to make argument first on his own side and then on the other side, and ask the court and jury to decide which of the arguments is the better. It has been said by a learned judge that the best method to reach the truth is for counsel on each side to contend simply for his point of view, and that, strange as it may seem, when the parties are presenting falsehood and error on their respective sides, the truth is best got at.

Mr. BLISS. Your honor has established the precise rule that Mr. Merrick and myself had thought on consultation was best; but we were anxious to avoid being charged with withholding any papers, and, therefore, have produced them all.

The COURT. All these papers are regarded as in evidence.

Mr. BLISS. As bearing upon the question that was raised, I will say that there is no jacket in connection with any of these papers that I have offered. Each paper is by itself an independent paper, outside of any jacket. Our view was this: That we should put in no petitions except as in the Kearney and Kent route, such as we propose to prove had been altered. This is the case also in the Canyon City and Camp McDermot route. Where there are interlineations or alterations or anything of that sort, to which we desire to call attention, we shall produce the papers.

The COURT. Very well. We will take that course; but all these papers are regarded as in evidence if the counsel for the defense desires it.

Mr. BLISS. I have pursued every day the principle that your honor suggested. Whatever papers I have not put in the case I have returned to the files of the Post-Office Department where these gentlemen can have access to them.

Mr. MERRICK. I understand then we are to offer in evidence only the papers on our side of the case.

The COURT. Yes.

Mr. CARPENTER. I understand that all the papers will be put in evidence and they will read what they choose.

The COURT. The papers that are here will be regarded as in evidence if they are proper evidence.

Mr. BLISS. If they are offered.

The COURT. There may be many of these papers that you will not want to use.

Mr. CARPENTER. But these papers upon which this expedition has been ordered should be in evidence. We do not require that they be read. But let them be put in evidence.

The COURT. The court cannot make that order.

Mr. MERRICK. It is impossible for the court to make that order.

Mr. WILSON. Do I understand from the counsel that they propose to return all these petitions, &c., that they have here to the files of the Post-Office Department?

Mr. BLISS. I say that, in accordance with the suggestion of his honor the other day, every paper on these routes which we do not propose to put in evidence will be returned to the files of the Post-Office Department. I propose to do the same thing, whether the papers are petitions or anything else.

Mr. WILSON. Now, your honor will see that that subjects us to the necessity of sending to the Post-Office Department, by subpoena, for these papers. They propose to introduce just what they want to, and to return the balance to the files of the Post-Office Department, where we cannot even consult them.

Mr. BLISS. I offered to have them kept in court. They may have access to them anywhere. If they prefer it, I will retain them in my custody, and they can have access to them there. Your honor instructed me to return them to the files.

The COURT. That matter was considered maturely, and the court directed that the papers not used should be returned to the Post-Office Department. I said further that if the defense was refused access to the papers, when the proper time came the court would arrest the trial rather than force the defendants to go on in the face of obstacles of that kind thrown in their way by the Government.

Mr. WILSON. The court meets at 10 o'clock and adjourns about 4, and during those hours a person can get in the Post-Office Department, but not at any other time. Your honor can see the inconvenience.

The COURT. You can take out a subpoena and have these papers brought here in half an hour.

Mr. WILSON. Very well.

The COURT. I want to get a clear and refined view of the case of the prosecution by itself.

Mr. TOTTEN. I hope your honor will succeed in getting a view of the case. As far as I am concerned, it would take a microscope to see it.

The COURT. You may have some defect of vision.

Mr. McSWEENY. Allow me simply to call your attention to page 980. The remarks of your honor may be used as a guide. You say here :

If he willfully made a contract by which he undertook to pay largely for service when he knew the service could not be performed, and to expedite over routes where the service could not be performed, that would be strong evidence against it. But when he seems to have based his conduct upon petitions of Senators, Members, governors, and members of the legislature, who stated none of these difficulties, I am unwilling to impute wrong until it is proven.

In rendering your decision there, your honor did take into account this very state of things.

The COURT. I took into account the state of things as they existed at that time with all those petitions before me.

Mr. McSWEENY. That is just it. Now, if you were deciding upon a motion to dismiss this case or to instruct the jury to return a verdict of not guilty, your honor will see how important it is to have that matter before you as a guide. [Continuing to read:]

Mr. MERRICK. The testimony was given on Friday.

The COURT. In regard to that the contract has been made. Some postmaster writes to the Postmaster-General, "In my opinion the service cannot be performed on this route; the contract cannot be carried out." Is the Second Assistant Postmaster-General to believe the statement of a postmaster in opposition to all the petitions which he has acted upon in giving out the contract, and to break up the contract; break up the arrangement because some postmaster has written about it?

Mr. BLISS. Your honor excludes this testimony, then?

The COURT. I do for the present.

You then go on to say that no corruption should be imputed, nor even impropriety, in the face of this exposition, which they have deduced from their own jacket.

The COURT. Yes; so far as those petitions relate to that subject and that occasion; but the court did not intend to be understood then as prejudging the whole case after all the testimony should be brought before the court. I merely spoke then with reference to the route and to those papers that were before the court and before the jury. The petitions on both sides, for the defense and for the prosecution, had been presented in regard to that matter. There were a large number of petitions in favor of allowing the expedition on that particular route. Subsequently a postmaster on the route stated in a letter that the expedition was unnecessary. The court would not, and I am sure no jury would, think that a letter from a postmaster written subsequent to the allowance of the expedition or order, ought to outweigh all the petitions which were in the case from these respectable authorities. But my remarks were confined to the particular matter then before me.

Mr. MERRICK. That route.

The COURT. That route.

Mr. CARPENTER. Of course, we did not understand anything different from that.

Mr. McSWEENY. As star by star went down, I thought we might finish them.

The COURT. This is a very intricate and difficult case to understand and comprehend. For that reason it appears to me better that we pursue an orderly method of investigation. Let us have one side first, and then the other. If at the conclusion of the testimony for the prosecution it should be manifest that the charge of conspiracy for the purpose of defrauding the Government has not been made out, I am sure, on proper motion, the court would not hesitate to say so, and that might save a great deal of time and investigation. But in order to reach that point it is not desirable that the court should have testimony on both sides introduced and laid before it to be passed upon in the place of a jury. When the testimony is in on both sides the jury is to

decide. If the testimony on both sides is brought in, such a motion as you have proposed is made, the court will determine not upon a proper demurrer to the evidence, but to determine according to the weight of the evidence, and that is not the province of the court.

Mr. CARPENTER. Now, we have a great deal of evidence not in these papers.

The COURT. I dare say you have. It will be for you to show you have not.

At this point (12 o'clock and 40 minutes past the hour) the court took its usual recess.

AFTER RECESS.

Mr. BLISS. I offer in evidence the following

GREENWOOD,

Mr. JAMES H. TYNER,

First Assistant P. M. General:

My duty to the department requires that I should suggest the present mail service [weekly] from Pueblo to Rosita, and from Florence to Greenhorn, by which we receive all our mail. We should much prefer the route from Pueblo to Rosita, and mail promptly by the other route, the service from Pueblo to Rosita a needless expense to the Government. I do not make this suggestion of any interested parties, but simply as a saving to the Government.

I am, dear sir, yours, very respectfully,

Indorsed:

P. M., Greenwood, suggests discontinuance of service.

Then, in pencil:

Contract.

[The paper last read was marked by the clerk as "Contract".]

Mr. TOTTEN. I suppose under the rule, you would admit this as admissible. It was made after the expedition.

The COURT. I have not made any such rule.

Mr. TOTTEN. The matter complained of here is the exclusion of this.

The COURT. I have not excluded evidence of this kind.

Mr. BLISS. [To Mr. Totten.] Unfortunately, the letter is not correct. The expedition was ordered by the department, and this letter is dated the 17th of March, 1879.

Mr. WILSON. This is a letter asking for a discontinuance of service.

Mr. BLISS. Of the route.

Mr. WILSON. Yes.

The COURT. By the postmaster at Greenwood.

Mr. BLISS. Yes, sir.

Mr. TOTTEN. A route established by law.

Mr. BLISS. The next is a jacket:

Date, July 8, 1879. State, Colorado.

No. of route, 3-134.

Termini of route, Pueblo and Rosita.

Length of route, 50 miles.

No. of trips per week, one.

Contractor, John R. Miner.

Pay, \$388 per annum.

See memorandum inclosed.

1st. Increase service to six trips per week from July 1st, 1879, at \$2,328 per annum additional pay, being pro rata.

2d. Reduce running time from 15 hours to 10 hours, at \$5,432 per annum additional pay, being pro rata.

per last read was marked by the clerk 7 I.]
LSON. Now, if your honor please, on this jacket it says, "See
lum inclosed." Where is the memorandum?
ISS. There is no memorandum inclosed so far as I have ever
e first time I ever saw this paper was many months since and
no memorandum inclosed. I made an examination to find the
lum. There were certain papers inclosed but no memorandum.
approach to a memorandum, or that I could consider as com-
the possibility of a memorandum, is the calculation of figures.
he only papers that were there when I first saw it many
go were these petitions and this memorandum. [Indicating.]
g to offer this pencil memorandum. The petitions, under your
ecision, I am not going to offer. Here are the inclosed peti-
bmitting papers to Mr. Wilson.] When I first saw that jacket
ened that the particular case attracted my attention from the
saying "Memorandum inside," and I looked to find that memor-
d all that I found are now here.
connection, I desire to put in the paper of figures identified as
Mr. Turner's handwriting.

2,328
16

13,968
2,328

8)37,248(4,656
32

52
48

44
40

48
48

6
18

24
8

16

5,432

2,716
24

10,864
5,432

8)65,184(8,148
64
2,716

11
8

38
32

64
64

5,432

[The paper last offered was marked by the
In the same jacket the following papers:

Wa

Hon. THOMAS J. BRADY,
2nd Assistant P. M. General :

SIR: I have the honor to transmit herewith my prop
route 38134 from Pueblo to Rosita, Colorado, on an ex
Hoping it will receive favorable consideration,
I am, very respectfully,

Indorsed :

1879, May 6th. 38134 Colo. John W. Dorsey trans
expedited schedule.

[The paper last read was marked by the cl
So far, the record contains no evidence of M
any connection with this route.

Mr. MERRICK. The evidence did not exist
Mr. BLISS. Also the following:

Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General :

SIR: The number of men and animals necessary to c
the present schedule is three men and twelve anim
schedule of ten hours, seven times a week, is seven m
Respectfully,

STATE OF VERMONT,
County of Addison :

John W. Dorsey, being duly sworn, deposes and says
as he verily believes.

Sworn to and subscribed before me this 21st day of .
[SEAL.]

Ch

Indorsed as follows:

1879, May 6. 38134, Colo. Sworn statement of J
animals and men required to carry mails seven times

[The paper last read was marked by the cl

Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General :

SIR: I have the honor to request the privilege of w
presented some days ago, as to the men and animals requi
mails on route 38134, in order to correct an error there
Respectfully,

Indorsed :

May 8, 1878. 38134, Colo. Subcontractor desires to

[The paper last read was marked by the c

Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General :

SIR: The number of men and animals necessary to c
the present schedule, seven times a week, is two men a
necessary on the schedule of 10 hours, seven times a week
Respectfully,

OF VERMONT,
County of Addison :

W. Dorsey, being duly sworn, deposes and says that the above statement is
he verily believes.

n to and subscribed before me this 21st day of April, 1879.

L.]

RUFUS WAINWRIGHT,
Clerk of the Addison County Court.

orsed :

8, 1879 38134, Colo. Sworn statement of subcontractor relative to men and
required on present and proposed schedule.

e paper last read was marked by the clerk 12 I.]

ill ask your honor to look at those oaths, both sworn to on the
day, before the same officer, and see their inconsistency.

MERRICK. On a calculation based on those oaths the result is
me, really.

HENKLE. If the court please, if the technical rules are to be
ed in the further prosecution of this case it seems to me that
papers are incompetent or inadmissible at this point. There is
undation laid for them. They have not proved the execution of
apers, and have not proved that Mr. Dorsey made those affidavits

We object to them.

BLISS. The papers are in the jacket on which the order was

HENKLE. We object that they are not proved.

COURT. The objection is overruled.

HENKLE. We desire an exception.

e affidavits of John W. Dorsey were submitted to the jury for ex-
tion.]

BLISS. Next comes a jacket :

, October 22, 1879. State, Colorado.

f route, 38134.

ini of route, Pueblo and Rosita.

th of route, 50 miles. D. C.

f trips per week, 7.

ractor, John R. Miner.

\$8,148 per annum.

y the Auditor of the Treasury for the Post-Office Department that the subcon-
Eli Hansom, whose post-office address is Pueblo, Pueblo County, Colorado, for
on this route at \$3,100 per annum from October 1st, 1879, to June 30, 1882, has
ed in this office subject to fines and deductions.

FRENCH.

e paper last read was marked by the clerk 13 I.]

losed the subcontract reciting that whereas John R. Miner has
accepted according to law as contractor for transporting United
s mails on route 38134, from Pueblo to Rosita, in the State of
ado, once a week, by the United States Post-Office Department:
this indenture witnesseth that on the 4th day of October, 1879,
R. Miner, party of the first part, and Eli Hansom, together with
James Rice and Thomas Corrigan, of the second part, have agreed,
ows :

said party of the second part agrees to transport the United
s mail on route 38134 seven times a week and return for \$3,100
num. Subject to fines and deductions. Signed John R. Miner,
Government contractor, by M. C. Rerdell, his attorney, in fact,
li Hansom, subcontractor, and acknowledged before the post-
r at Pueblo on the 11th day of October, 1879.

e subcontract was marked by the clerk 14 I.]

Mr. HENKLE. I object, on behalf of Mr. Miner, that there is no proof of the authority of Mr. Rerdell to sign that contract.

The COURT. I make the same decision as in the other case. The objection is overruled.

Mr. HENKLE. I desire an exception.

Mr. BLISS. The next is the following letter :

GREENWOOD, COLORADO, May 8, 1880.

To the FIRST ASSISTANT POSTMASTER-GENERAL,
Washington, D. C. :

DEAR SIR : We have received no daily mail by route 38134 since April 30, 1880, it having been carried to the former location of the office. While this office is located on the route on which the contract was let, they have persistently refused to deliver here. Both myself and postmaster at Rosita, Custer County, Colorado; also P. M. Ingersoll, at Pueblo, consider it a useless and expensive route to the Government, as this office is the principal one on route 38134, can be, and is now supplied by route 38169, which is ample to supply the demands of this office. We suggest that route 38134 be discontinued, and that Silver Park office [a precinct containing about fifty persons all told] can be supplied by a tri-weekly mail from Rosita at a trifling expense to the Government compared with the present.

Hoping the above will receive your earnest attention, I remain,

Yours respectfully,

J. W. WALTERS,
P. M., Greenwood, Custer County, Colorado.

[The paper last read was marked by the clerk 15 I.]

Mr. TOTTEN. If your honor please, I object to that letter because it is an application of a postmaster to the Post-Office Department to discontinue an established post-route. No one has authority to do that except the Postmaster-General. Hence I say it has no application to the issue in this case. I object to it.

The COURT. The objection is overruled.

Mr. TOTTEN. I desire an exception.

Mr. BLISS. The next is a jacket, as follows :

Date, 1879, October 17. State, Colorado.
No. of route, 38134. Termini of route, Pueblo and Rosita.
Length of route, 50 miles. No. of trips per week, 7.
Contractor, John R. Miner. Pay, \$4,148.
Schedule desired as below :
L. P. daily at 7 a. m.
A. R. by 5. p. m.
L. R. daily at 8 a. m.
A. P. by 6 p. m.
Change as above.

FRENCH.

[The paper last read was marked by the clerk 16 I.]

The contract in this case with the Government is for \$388 per annum, dated March 15, 1878, with John R. Miner to carry the mail from Pueblo by Greenwood to Rosita and back, once a week. It is signed by John R. Miner, on the 8th of April, 1878, and witnessed by John W. Dorsey and A. A. Friedrich. The oath is signed by John R. Miner, and sworn to on the 8th of April, 1878, before A. E. Boone, notary public.

The schedule is as follows :

Leave Pueblo Saturday at 6 a. m.
Arrive at Rosita by 9 p. m.
Leave Rosita Friday at 6 a. m.
Arrive at Pueblo by 9 p. m.

[The paper last read was marked by the clerk 17 I.]

Mr. HENKLE. I object to the contract on the ground that they have not proved it.

Mr. BLISS. It was proved before you came into the case.

The COURT. This question was raised I believe the very first day.

Mr. MERRICK. Yes, sir; they have all been proved.

Mr. HENKLE. I beg your honor's pardon. What was decided?

The COURT. That papers having been produced from their proper repository in the department may be given in evidence so far as they are relative to the issue; that copies of the papers would be competent evidence under the act of Congress; but as it would have been very troublesome to have all these papers copied and certified in due form by the department the court decided that the production of the papers themselves from the depository, proved to have been the papers so kept and belonging, would be as good evidence in the case as certified copies of the same paper; that as the act of Congress made certified copies of them proper evidence, the proof that they were original papers brought from the department made them quite as good evidence as the copies could be. For that reason it was that the court decided that all these papers so produced and so proved were competent evidence.

Mr. HENKLE. Of course, I do not cavil at your honor's ruling in the case. I did not know that such a ruling had been made.

The COURT. That was one of the earliest rulings.

Mr. HENKLE. Your honor will allow me to reserve an exception.

The COURT. Certainly.

Mr. HENKLE. It is introduced now for the first time in evidence, as I understand it. This is the time to except to it.

The COURT. I am merely speaking of the rule in cases of a similar kind.

Mr. HENKLE. This particular paper has not been offered in evidence before, as I understand it.

The COURT. Perhaps not; but it falls within the rule.

Mr. HENKLE. I desire to reserve an exception.

Mr BLISS. Here is a jacket with no date to it:

State, Colorado. No. of route, 38134.

Termini of route, Pueblo and Rosita; length of route, 50 miles.

No. of trips per week, one.

Contractor, John R. Miner. Pay, \$388 per annum.

I would like to have your attention to this, Judge Wilson, because it is barely possible it is the missing memorandum.

The COURT. It states no new fact, anyway.

Mr. BLISS. [Continuing to read:]

Postmaster at Greenwood, the only intermediate office on the route, states that "My duty to the department requires that I should suggest the discontinuance of the present mail service [weekly] from Pueblo to Rosita, as we now have a tri-weekly service from Florence to Greenhorn by which we receive all our mail."

Reference to the date of the letter will settle that question. That letter is March 17, 1879. It could not be that.

Mail matter from Pueblo to Rosita is transmitted from Pueblo to Cañon City on the Denver and Rio Grande Railroad, and from there to Rosita, via route No. 38132, 31 miles and back, 6 times a week.

Length of this route, 50 miles, and from Rosita to Silver Cliff, [which office it is supposed to benefit by increase of service to daily and expedition], 9 miles, making distance from Pueblo to Silver Cliff 59 miles. By the present service on route No. 38132 Silver Cliff receives supply from the railroad by traveling a distance of 31 miles.

6 trips, \$2,328 per annum.

Expedition, \$5,432 per annum.

Total increase, \$7,760 per annum.

Increase of service and expedition of schedule recommended by Hon. H. M. Teller, U. S. S., and Hon James B. Belford, M. C. Hon. W. H. Hyde, mayor of Pueblo, also recommends improved service petitioned for.

The COURT. That packet states that the distance is thirty-one miles.

Mr. BLISS. No; the packet states that by the way over Cliff receives a supply from the railroad at thirty-one miles. That packet, I ought to have written the face in blue pencil, "Do this—Brady." I have no date showing any order, and the day-book page is blank for writing postmaster and contractor. They went any further than that.

[The packet last read was marked by the clerk.]

FRANK A. TUTTLE sworn and examined.

By Mr. BLISS:

Question. Where do you reside?—**Answer.**

Q. How long have you lived at Rosita?—**A.**

Q. What is your business?—**A.** I am at present engaged in real estate and mine brokerage business.

Q. Have you ever held any official position in connection with the Post-Office Department?

Q. Have you ever had anything to do with the mail on route 38134, from Pueblo to Rosita?—**A.** I have for the first quarter of the contract.

Q. Of what year?—**A.** From July to October.

Q. How many trips a week were then made?

Q. What was the time?—**A.** Fifteen hours.

Q. Whom were you carrying it for?—**A.** It was John R. Miner who was contractor.

Q. Was it at that time a passenger route?

Q. What was the mail carried on; horseback or two-horse hack. We sometimes run four horse hack.

Q. What sort of a road is it from Pueblo to Rosita?—**A.** Of the road, about half, is hard road, mountain road.

Q. Which half is that?—**A.** The half near Rosita to Greenwood.

Q. How is it from Greenwood to Pueblo?—**A.** One or two hard hills in there.

Q. When you were carrying it during the time you carried passengers?—**A.** I did.

Q. How many men and animals did you use on the route from Pueblo and Rosita?

Mr. HINE. I object to the question as incompetent.

The COURT. The objection is overruled.

Mr. HINE. Note me an exception.

A. I think I used from six to eight horses and men. I do not remember exactly now.

Q. That was for both your passenger and mail?—**A.** Yes, sir.

Q. If you had been carrying the mails alone, how many would you have needed?

Mr. HINE. I object to that question.

The COURT. The objection is overruled.

Mr. HINE. I want an exception noted.

A. Two or three horses and two men.

Q. Of the men of whom you have spoken, how many?—**A.** One.

Q. What was the other?—A. Stock tender.

Q. Where was the stock tender?—A. The stock tender was at Green-
d. Excuse me. I do not know as I understood the question prop-
; that is, you asked me the number of horses that would have been
essary to carry the mail alone.

Q. Yes. How many stock tenders did you actually have for your
l and passenger business?—A. Two or three; I do not remember
ch.

Q. Did you have any express business over that route?—A. Yes,

Q. Did you carry that at the same time?—A. Yes, sir.

Q. Did you ever run that route except during those three months?—
I run on that same road. The route was under a different number
ne contract preceding.

Q. From Pueblo to Rosita?—A. From Pueblo to Rosita.

Q. How long?

Mr. HINE. I object to the question.

he COURT. It is overruled.

Mr. HINE. Give me an exception.

A. Three years and nine months, to the best of my present recol-
ion. The contract was a special letting, when it was originally let,
it commenced three months after the regular contract.

Q. What was the time, then?

Mr. HINE. I object to that question.

he COURT. The objection is overruled.

Mr. HINE. Give me an exception.

A. When I first commenced that service it was a tri-weekly service,
a fifteen hours' schedule.

Q. Was it changed at any time?—A. It was changed towards the
of my first contract. I do not remember the exact time.

Q. To what was it then changed?—A. Once a week, with fifteen
rs' schedule.

Q. To carry the mail on a fifteen hours' schedule, once a week and
k, how many men and horses would it take?

Mr. HINE. I object to that question.

he COURT. Your objection is overruled.

Mr. HINE. Give me an exception.

A. If I was figuring for the contract, I should figure for two horses
three men.

Q. Could they do it?—A. Yes, sir; once a week, and fifteen hours
edule, I understood you.

Q. Yes; now how many men and horses were necessary to carry it
en times a week on a fifteen-hour schedule.

Mr. HINE. I object to that question.

he COURT. I overrule the objection.

Mr. HINE. I wish an exception noted.

A. I should want fourteen horses and six men.

Q. My question just put, was intended to be seven trips a week, and
en hours' time; how many horses would that take?—A. It could
done with perhaps ten or twelve horses.

Q. And how many men?—A. Four men, I should think.

Q. In the number of men do you include any stock tenders?—A. Yes,

Q. How many of the four would be drivers?—A. Two.

Q. On seven times a week, and a ten hours' schedule, how many men
horses would it take?

Mr. HINE. That is objected to, of course.

A. I should want fourteen horses and six men.

Q. How many carriers?—A. Two; but I should also to relieve my carriers; if it was figured on that number.

Q. During the period of three months from 1, 1878, did you perform your trips within that time; according to my present recollection; it is correct?

Q. You generally came in on schedule time?

Q. At what rate per annum were you paid for that service, best recollection, \$700.

Q. What is the length of the route?—A. Fifty miles.

Q. Is that correct?—A. That is about correct, as far as it goes.

Q. You have been over it?—A. I have been over it many times.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. You only carried this mail in the summer of 1878?—A. Under this contract; yes, sir.

Mr. WILSON. That is all.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. Is your judgment of the number of men and horses to be necessary based upon your whole experience, or only upon your summer experience?

Mr. HINE. I object to that question.

The COURT. It is a question connected with the case. Mr. WILSON. I had finished my cross-examination.

The COURT. You can cross-examine upon it. Mr. BLISS. What is your answer?

A. My answer is it would require two or three men and two horses would be used. At times in the winter three.

Q. What I asked was, was it based upon your summer's experience?—A. My whole experience.

RECROSS-EXAMINATION.

By Mr. WILSON:

Q. It takes more horses in winter than in summer?—A. Yes, sir.

Q. Do you have bad weather there in the winter?

Q. Blizzards?—A. I do not know that we have. We have some pretty heavy snow storms on the route.

Q. Then it requires an extra force to get all the mail over?—A. Yes, sir; for about ten miles of the road.

Q. In case you were going to provide stage mails during summer and winter through a year, would you provide yourself with a reserve force?—A. I should.

Q. You have given the number of horses necessary to actually perform the service?—A. No, sir. I have allowed in my figures for about five extra horses that I would keep as a reserve at all times, because that road you cripple horses. There are times when you might need more than that.

Q. And sometimes you might need more horses than you have named?—A. Yes, sir; might need them.

Q. This was a very close, low down figure you have made it?—A. I testified in the examination-in-chief that it could be done by figuring solely with fourteen horses and six men. That allowed for four extra horses.

Mr. WILSON. That is all.

By Mr. BLISS:

Q. When they were running fifteen hours' schedule, you would have five spare horses?—A. Yes, sir.

Q. What difference would there be in that respect; how many spare horses would you have, then?—A. I would not have to exceed two that I would keep regularly always on hand. I found while I was running that road that I frequently had to hire horses outside of what I kept for my own use.

By Mr. MERRICK:

Q. When you were running on fifteen hours?—A. Yes, sir.

By Mr. BLISS:

Q. On both schedules?—A. Yes, sir.

By Mr. WILSON:

Q. You had to hire horses because the other horses got crippled up something happened?—A. Yes, sir; sometimes there were emergencies that we did not look for. We did not always have them on hand, but it was cheaper to hire horses occasionally.

Q. What do you do if one of your men gets sick?—A. Lay him off and put on another.

Q. You reside at Rosita?—A. Yes, sir.

Q. How long have you been here?

The WITNESS. Here in Washington?

Mr. WILSON. Yes, sir.

A. In the neighborhood of two months.

Q. You were before the grand jury, I believe?—A. Yes, sir.

By Mr. BLISS:

Q. Did you come here under subpoena?—A. I did, sir.

Q. Could that mail have been carried on that route seven times a week in fifteen hours, with two men and six animals, all the year around?

Mr. HINE. I object to the question.

The COURT. The objection is overruled.

A. I should not want to do it.

Q. In your opinion, could it be done?—A. I do not think it could, but I could not say what is possible. I would not undertake to do it with that number.

Q. [Submitting a paper to witness.] I had forgotten something. Please look at that letter and see if you received it.—A. [After examining the same.] I did.

Q. [Submitting an envelope to witness.] I find it in that envelope.

Is that the envelope it came in?—A. I cannot tell you. I presume it is. It is in the same handwriting as the other, but I cannot identify the envelope in connection with it particularly.

Q. [Submitting another letter and envelope to witness.] Please look at this other letter and envelope?—A. [After examining the same.] Yes, sir.

Q. When you were carrying the mail, from whom did you receive your pay?—A. I received my pay from one of the banks in Pueblo; I do not remember which.

Q. How did you get it?

Mr. TOTTEN. Your honor, is that material in this case?

The COURT. I do not know.

Mr. TOTTEN. I do not think it is, and I object to it.

Mr. BLISS. I withdraw the question temporarily. I propose to offer these letters.

The WITNESS. You asked me whether I received these letters. There is a pencil memorandum on the corner of each of those letters that I do not remember to have seen when I received them.

By Mr. WILSON:

Q. Do you know General Brady?—A. I do not. He has been pointed out to me since I have been here. I never spoke to the gentleman.

Q. He never rode over that line with you?—A. Not to my knowledge.

Q. Do you know Mr. Turner?—A. I do not.

Q. Have you ever had him pointed out to you?—A. Since I have been here; yes, sir.

Q. How many times did he ride over that route with you?—A. I do not remember that he ever rode over it with me.

Mr. MERRICK. [To the witness, facetiously.] Do you recollect that Mr. Wilson ever rode over there with you?

Mr. WILSON. I am going to ride over it some of these days, and I am going to sit on the seat with the driver.

Q. [Resuming.] Do you recollect of furnishing any information to the department as to how many men and horses you used in carrying that mail?

The WITNESS. At that time?

Mr. WILSON. Yes, sir.

A. I do not remember it, if I did so.

Q. It would have been a very unusual thing if you had done it?—A. It would.

Q. Have you had much experience in carrying mails?—A. I have been connected with carrying mails for the last eight years with other routes—nearly eight years.

Q. Did you have a subcontract for carrying these mails?—A. Yes, sir.

Q. From whom did you get your subcontract?

The WITNESS. Under this present route?

Mr. WILSON. Yes, sir.

A. There was some agent—I believe his name was Watts, if I remember rightly—with whom I made my contract for these three months.

Q. You made your contract with a man named Watts?—A. That is my recollection, but I would not be positive that that was his name. He claimed to be agent for the contractor.

By Mr. BLISS:

Q. Did you ever correspond with anybody with reference to that mail route?—A. From these letters that have been shown me, I presume I did, though I had forgotten it until I run across those letters.

Q. How much of a place is Rosita?—A. About twelve to fifteen hundred inhabitants, I think.

Q. How much was it in 1878?—A. According to my recollection now I should say about a thousand to twelve hundred?

Q. How many post-offices were there between Rosita and Pueblo?—A. Part of the time one and part of the time two.

Q. When there was one what was that?—A. Greenwood.

Q. When there were two?—A. The other was Silver Park.

Q. Which was the one that remained all the time?—A. Greenwood.

Q. How much of a place is Greenwood?—A. A store and a blacksmith shop at the post-office, or thereabouts. It is an agricultural neighborhood there, and there is quite a population who receive their mails from that office.

Mr. BLISS. I want to offer these letters in evidence.

Mr. HINE. We object to them, your honor.

Mr. TOTTEN. We object to them, your honor.

Mr. BLISS. [Reading:]

John W. Dorsey & Company, mail contractors—

Mr. TOTTEN. [Interposing.] Your honor, we object to the reading of them.

The COURT. I know you do.

Mr. TOTTEN. Does your honor overrule my objection.

The COURT. Yes.

Mr. TOTTEN. We take an exception.

Mr. BLISS. [Continuing to read:]

[Branch office, Kansas City, Mo. John W. Dorsey & Co., mail contractors.]

WASHINGTON, D. C., August 19th, 1878.

FRANK A. TUTTLE, Box 44, Pueblo, Colo.:

DEAR SIR: Yours 14th received. We accept your proposition, *provided* (so that there shall be no conflict) that a friend of ours, who has recently gone to Colorado, has not made different arrangements before we can get him word.

The petition for expedition should be separate from the petition for increase of number of trips. We make no boast of being *solid* with anybody, but can get what is reasonable.

Yours, truly,

MINER, PECK & CO.

[The letter just read was submitted to the clerk to be marked, and was by him marked 19 I.]

Mr. INGERSOLL. I withdraw all objection so far as we are concerned.

Mr. BLISS. The envelope is stamped—

Washington, D. C., August 19th, 1878, 5 p. m.

[The envelope just referred to was submitted to the clerk to be marked, and was by him marked 20 I.]

The next letter is as follows:

WASHINGTON, D. C., 3d Sept., 1878.

FRANK A. TUTTLE:

DEAR SIR: Yours 23d received. We have been looking into the chances of having route 38134 increased to three trips a week, and they do not look promising. The only

office supplied by the route is Greenwood, according to the rule of the department, as Rosita has mail six times a week from route 38132, and Pueblo is on R. R. We will, however, do what we can to accomplish it. If we fail we have an offer to carry the mail once a week at a reasonable price.

Truly, yours,

MINER, PECK & CO.

[The letter just read was submitted to the clerk to be marked for identification, and was by him marked 21 I.]

The envelope is stamped—

Washington, D. C., Sept. 3, 1878, 4 p. m.

[The envelope just referred to was submitted to the clerk to be marked for identification, and was by him marked 22 I.]

Mr. BLISS. That is all, Mr. Tuttle.

ALVAH A. HULL sworn and examined.

By Mr. BLISS :

Question. Where do you live ?—Answer. Pueblo, Colorado.

Q. How long have you lived there ?—A. I have lived in Pueblo just since November.

Q. Where did you live before that ?—A. In Greenwood.

Q. Did you ever have anything to do with carrying the mail on route 38134, from Pueblo to Rosita ?—A. I did.

Q. When ?—A. I commenced about February 13, 1880, under a temporary contract for six weeks.

Q. Were you alone in that ?—A. Yes, sir.

Q. Did you carry it for those six weeks ?—A. I carried it a month.

Q. Then what happened ?—A. Then the contractor came back on the route and he let his son-in-law have half of it to run, and I run the other half.

Q. Who was the contractor to whom you refer as coming back on the route ?—A. Eli Hanson.

Q. You ran half of it and Hanson's son-in-law the other half ?—A. Yes, sir.

Q. What was the name of the son-in-law ?—A. Thomas Corrigan.

Q. How long did you and Corrigan run it ?—A. Six weeks or two months, to the best of my recollection.

Q. What then ?—A. I took the whole of the contract.

Q. And then you run it after that time, how long ?—A. Until it was discontinued.

Q. When was that ?—A. The 31st of July, 1881.

Q. When you run it for the month under the temporary contract you run the whole route ?—A. Yes, sir.

Q. How many times a week ?—A. Seven.

Q. What schedule of time ?—A. Ten hours.

Q. Then when you run the whole route, how many times a week did you run it ?—A. Seven.

Q. On what schedule of time ?—A. Ten hours.

Q. How many men and carriers did you employ in running that route seven times a week seven hours' schedule ?—A. It was run in three different shapes.

Q. Give us each shape, then ?—A. When Corrigan and myself were running it we used six-horse coaches. We had forty horses on the line, and six hostlers and two drivers.

Q. After you and Corrigan separated, how many horses and men did you use ?—A. The travel fell off and I put on lighter coaches. I used

about six months in the year eighteen horses, that is, including about two extras, and in the winter season I kept about twenty head.

Q. How many men during that period; how many carriers, and how many hostlers?—A. Two drivers and three hostlers.

Q. Did you at any time change from those lighter coaches to anything else?—A. When the railroad reached Silver Cliff I took the coaches off and carried it on horseback.

Q. Why did you take the coaches off when the railroad reached Silver Cliff?—A. Because there was no travel.

Q. No passenger travel?—A. No, sir.

Q. And you carried the mail after that time, how; on horseback or buck-boards?—A. On horseback.

Q. When you carried the mail that way, how many men and horses did you use?

Mr. HINE. I object to the question.

A. I used the same number of men.

Q. How many; just give us the number, please?—A. Five men and seven horses.

Q. Of those five men how many were carriers?—A. Two.

Q. The other three were what?—A. Hostlers.

Q. Now, what time of the year was that?—A. That was June and July.

Q. How many men and carriers were necessary to carry that mail seven times a week on a ten hours' schedule, simply carrying the mail, without reference to passengers or express matter or anything of that kind?

Mr. HINE. To what point?

Mr. BLISS. I mean carrying the mail over the route.

A. If I was going to commence to carry it for a period of years, say four years, I should not undertake it with less than ten or twelve horses.

Q. And how many men?—A. And five men.

Q. Would that be sufficient?—A. I think twelve horses would be plenty.

Q. The five men would be what; all carriers?—A. Three stock tenders and two carriers.

Q. Was it ever carried, to your knowledge, seven times a week on a fifteen hour schedule?—A. No, sir.

Q. What is the distance?—A. Fifty miles.

Q. How much did you receive?

Mr. WILSON. If your honor please, I think that is carrying it too far.

The COURT. It is objected to, and I do not see its importance.

Mr. BLISS. Well, sir, is it any evidence that when they make an allowance here of—I do not remember what the amount was—say, five or six thousand dollars for expedition alone to the contractor, if it can be made to appear that the mail was actually carried, including the compensation for expedition and the other, for \$2,500, for instance.

The COURT. Yes. You may ask it.

Mr. TOTTEN. We reserve an exception.

Q. [Repeating.] How much did you get for carrying that mail?—A. Two thousand six hundred dollars.

Q. A year?—A. Yes, sir.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Why did you run six-horse coaches into Rosita from Pueblo?—A.

During the months of April and May, about two is all we run six-horse coaches.

Q. What was the occasion for your running there?—A. To carry the travel.

Q. What was the occasion of so much travel? The excitement on account of the mines, I suppose else.

Q. Has a railroad been completed to Rosita?—

Q. How far is it from Rosita?—A. Seven miles

Q. To what point has it reached?—A. Silver C

Q. Silver Cliff or West Cliff?—A. West Cliff.

Q. Is it the same thing?—A. It is the same th stand it.

Q. In these statements you have been making number of men and horses, you were making close fi to that, were you?—A. Yes, sir.

Q. When was the road completed to Silver Cl you tell?—A. About two years ago, to the best o

Q. Now, that railroad has been built in there on ing interests that have been developed at Rosita?

Q. And since the railroad got in there they ha service?—A. Yes, sir.

Q. What was the weight of the mail before Silver Cliff?—A. As far as Greenwood it weighe pounds generally. From there up it was generall

Q. From there up to where?—A. From Green was generally pretty light.

Q. Was that before the railroad was completed

Q. How did they get the mail to Rosita?—A route from Cañon City.

Q. It went from Pueblo out on the railroad to went down to Rosita?—A. Yes, sir.

Q. How did you get your forage in there—y men and horses?—A. Carried them in in teams.

Q. Did you calculate those teams in the numb used for the purpose of stocking this route?—A.

Q. You did not calculate that?—A. No, sir.

Q. And that was essential to be done, was it had it to do.

Q. And that required extra men and horses fr actually carrying the mail?—A. Well, it did not r all the time.

Q. No, but it required an extra force of men sir.

Q. Did you not sometimes carry from a hundre dred pounds of mail on that route?—A. No, sir.

JAMES A. GOOCH sworn and examined.

By Mr. BLISS:

Question. Where do you live?—Answer. At R

Q. What is your business?—A. I am postmast

Q. How long have you lived at Rosita?—A. 1 years.

Q. How long have you been postmaster?—A. 1 1878.

Q. How does Rosita get its mails from Pueblo and the East ?—A. Usually by Cañon City.

Q. How was that in the latter part of 1878 ?—A. We received our rough mails from Cañon City over the star route.

Q. What was the number of the route ?—A. No. 38132, from Cañon City to Rosita.

Q. How far is it from Cañon City to Rosita ?—A. Thirty miles.

Q. What mail did you get over route 38134 in 1878 and 1879 ?—A. We got some mail from Pueblo and the intermediate offices.

Q. Did you get the whole Pueblo mail over that route ?—A. Not at all times; no, sir.

Q. And the mail east of Pueblo you did not get over that route at all ?—A. No, sir.

Q. Were you familiar with that mail route, 38134 ?—A. I have been over the road quite a number of times.

Q. Have you any knowledge of the number of men and horses that are used in carrying that mail ?—A. Only from noticing in passing over the road, within a casual observation.

Q. Did you notice sufficiently to be able to say how many horses and men were used at a given time ?—A. Not positively.

Q. Was that route at any time a passenger route ?—A. Yes, sir; passengers were transported over the route.

Q. In coaches ?—A. Yes, sir.

Q. That was discontinued after a time ?

The WITNESS. The coaches ?

Mr. BLISS. Yes.

A. Yes, sir; they were discontinued.

Q. What time did the mail that came over that route, leave Pueblo ?

The WITNESS. The daily mail ?

Mr. BLISS. Yes, sir.

Mr. TOTTEN. Give us your own knowledge about it, not what you have heard.

A. Well, the schedule——

Mr. WILSON. [Interposing.] The schedule itself is in evidence.

A. [Resuming.] I do not know what time it left.

Q. [Continuing.] What time did it get to your office ?—A. From five to seven.

Q. In the afternoon ?—A. In the afternoon.

Q. That was when it was run on what schedule ?—A. Seven times a week.

Q. And how many hours ?—A. Ten hours.

Q. Now, what time did you get the mail that you got from the East at Pueblo and Cañon City ?—A. That arrived about three o'clock at Rosita.

Q. Do you know what time that left Pueblo ?—A. Between two and three o'clock of the afternoon of the preceding day.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. How long did you say you had been at Rosita ?—A. I have lived there between nine and ten years.

Q. Will you give this jury some idea of the growth of that place and the development of the interests there for the last four or five years ?

A. When I first went there there was one cabin in Rosita, but it took a boom, and in 1876 we had a population of about eight or nine

hundred. It was quiet then for three or four years of 1879 and the fall of 1878, but more particularly they had another boom there, and our population was over twelve hundred. Now the population is some thirteen and fifteen hundred.

Q. What was the occasion of this rapid increase in booms, as you call them?—A. They were started by the discoveries of minerals there in the neighborhood.

Q. Do you know where the people came from generally?—A. Oh, from all portions of the Union.

Q. I wish you to state, now, to the jury what the necessities for having mails and having them express are, and the desires of the people on that subject?

Mr. BLISS. Are we to go into that, your honor, which is a question that we have not been allowed to go into.

Mr. WILSON. I want to show what the other facts are that are referred to in this statute.

Mr. BLISS. If it is understood, sir, that we are going to ask the jury a question with our witnesses we will not object; that we could not. We have tried it. He is asking the jury to state the desires of the people out there with reference to time, &c.

The COURT. [To Mr. Wilson.] Upon what ground do you ask that that is a proper question?

Mr. WILSON. I am going to follow it up by asking the jury whether or not petitions were numerously signed in that department from Rosita and elsewhere along the route. The service increased and expedited over this part of the route. I am going to follow my question up because I have in my honor please, that many petitions [holding up a paper] asking for the increase and expedition of the service on this route.

Mr. INGERSOLL. A full hand. [Laughter.]

Mr. BLISS. Your honor, the objection we make in this place, is that the question does not concern any particular place, that we have not opened that subject at this time in accordance with your honor's ruling to be examined by the jury, but upon such re-examination as the jury may come to put in their case, even for the purpose of examining the petitions. It is not in response to anything in any manner whatever. It is bringing in the facts of their case in that way, when we did not open the question.

Mr. WILSON. It is bringing in by way of evidence, your honor please, the facts, the condition of this route at this time this service was increased and expedited and we are bringing into this case. They have been examined by the jury for the purpose of showing that the mail went faster and thereby to lead the jury to believe as a matter of fact that there was no necessity for this increase and expedited route. [Indicating the map.] Now, here are the facts. Pueblo here ran up to Cañon City, a mail running up here, coming down here to Santa Fe in twenty-four hours, they want to have the jury know the occasion for this across here. [Indicating on the map] show by this witness that the people there there was a serious occasion for having a route here expedited, and that for the purpose of getting the

they circulated these petitions which I now hold in my hand, which I propose in a moment to submit to the witness—circulated these petitions to get the department to do that thing. I say that is strictly in answer to their examination-in-chief, where they have been attempting to show that there being a mail around here, there was no occasion for a mail across here. [Indicating on map.]

Mr. MERRICK. If your honor please, there is a single word I wish to submit to the court in reply to brother Wilson, and it is this: When that witness was asked in reference to the time the mail started from the other end of the route, where he does not live, he was told by the other side to state the facts of his own knowledge, and not to state what he had heard. He was limited, therefore, to stating when the mail arrived at his place. He is now asked to state not what one individual said to him, but common rumor and common talk, and common report among the people, and what some man may have written, or what some man may have said. If there is any writing from anybody that bears upon the case, it is competent itself as original testimony, if competent at all, and the writing itself must come in in its proper place. I am now applying legal principles to the rule laid down by your honor for our guidance to-day. We have not asked him anything about what people may have said or what individuals may have discussed, or what individuals may have written. We have asked him facts within his own knowledge, as to the mails coming from a certain point. Brother Wilson now asks him what men in the community said, what he thinks men in the community may have desired, he concluding as to their wishes from what he may have heard them say.

Mr. BLISS. I was going to make another suggestion: That Judge Wilson misunderstood the purport of my inquiry about the mail coming by Pueblo——

The COURT. [Interposing and correcting counsel.] By Cañon City.

Mr. BLISS. By Cañon City, they having asked on cross-examination one of the witnesses as to the amount of mail matter coming over that route. I asked him the question for the purpose of showing that a portion of the matter which would naturally come there was large, and whether there was any way in which it came down by that route. That was the matter that was in my mind; as to how they got their mail in Pueblo, and he said they got it from Cañon City. I did not go into the question at all in the light in which brother Wilson suggested.

Mr. TOTTEN. If your honor please, I want to make a suggestion also. The charges in relation to this route are, in the first place, that fraudulent petitions were provided by these people who were anxious to have expedition, and that they were fraudulently filed in the Post-Office Department; and in the next place, that an order was made for expedition which was not needful or necessary, and that a corrupt affidavit was made and filed in relation to the number of horses and drivers needed. Now, that is the very point at issue in this case. If this witness was there for any purpose, he was there for the purpose of showing, if he could, by his testimony, that this service was not necessary, that these people did not need this mail, were not anxious to have these mail facilities. So that, if we go back to the declaration which these gentlemen are standing upon and are bound to stand upon, to exclude this testimony is to exclude testimony upon the very question at issue. It is the play of Hamlet with Hamlet left out.

Mr. MCSWEENEY. Put in the ghost.

Mr. TOTTEN. Now, I submit to your honor, if they put this witness

on the stand for the purpose of testifying on this subject, the issue that is involved in the case, and ask him questions of general nature, as they have done, we have a right to cross-examine him generally and at large upon that subject. Now, it seems to me it would be very unfair to exclude an examination of the kind which brother Wilson has just gone into in this case. We certainly have a right to dispose of a witness when they put him on the stand. Your honor's rulings in relation to the jackets and the contents of the jacket should have no application to the cross-examination of a witness. When a witness is put upon the stand and examined directly in a general way touching his knowledge of the matter in issue, we have the right to get all he knows on the subject, so long as it is pertinent to the issue.

The COURT. The Government having inquired of this witness, who is the postmaster at Rosita, by what routes mail matter from Pueblo and from points east of Pueblo were brought to his office at Rosita, and the witness having answered that that mail matter usually reached Rosita by the railroad to Cañon City, and from Cañon City by this route down to Rosita, I think there was some object in it. The only object I can see in that inquiry was for the purpose of establishing the fact that they intended to show that there was no necessity, and no prudence, no honesty in establishing an expedited route from Pueblo to Rosita across the country by Greenwood. Viewing the inquiry in that sense, I think it is proper for the other side, on cross-examination, to inquire by what means the order for establishing the route from Pueblo to Rosita was made; and with that view, to ask him whether petitions have been circulated and signed asking the Postmaster-General for the expedition on that route. But inasmuch as the petitions have not been given in evidence themselves by the other side, I do not know that we will go so far as to open the door to let in those petitions on your side. [To Mr. Wilson.] You can ask him generally whether the people along the route desired expedition, and whether petitions had been sent on.

By Mr. WILSON:

Q. [Resuming.] Do you know of petitions having been circulated for increasing and expediting service on this particular route that we have under consideration—I refer to the route from Pueblo to Rosita?—A. I remember of one or two, perhaps more petitions.

Q. [Submitting a paper to the witness.] Now, I will ask you to look at that and see if that is one of them, and tell me whether that indorsement on that petition is your indorsement or not?—A. [After examining the same.] This is one of the petitions in question, and this is my indorsement.

Q. That is your handwriting on the petition?—A. Yes; this is my handwriting.

Q. Now, will you look at the names signed to that petition and see if you recognize them as being those of persons who lived at Rosita?—

A. All the subscribers are personally known to me, or have been.

Q. They are citizens there?—A. Yes, sir.

Q. [Submitting another paper to the witness.] Now, will you please look at this one and see if you know where the people live who signed that petition?—A. [After examining the same.] I recognize several of the names on that as residents of Pueblo.

Q. [Submitting another paper to the witness.] Now, then, take this one and see what you have to say about that?—A. [After examining the same.] The same as the former.

Q. Where do those people live?—A. Pueblo.

Q. [Submitting another petition.] Now, take this one, and see what you say as to it?—A. [After examining it.] I know a number of those is being residents of Pueblo.

Q. Is there an indorsement on the back of it? Turn it over and look and see if anybody indorses it.—A. It is indorsed by J. B. Belord.

Q. Do you know his handwriting?—A. I do not.

Q. [Submitting another petition.] Look at this one?—A. [After examining it.] It seems to be signed by Pueblo parties. I recognize quite a number there.

The COURT. I think the scope of the cross-examination ought to be enlarged a little, so far as he can prove the verity of one of these petitions by his own signature or by the signature of persons whom he knows, then he speaks of his own knowledge in regard to the paper.

Mr. WILSON. Yes, sir.

The COURT. And you can put in that paper on cross-examination if you desire to do so.

Mr. WILSON. I shall put them all in under that ruling, and read them to the jury.

Q. [Submitting a petition.] This is the one which has your indorsement on it. I will ask you to look at the body of that petition, and state to the jury whether or not the matters set forth in it are true, as you understand them, or were true at the time that the petition was made?—A. Well, that petition seems to set forth about what the people desired there. They were anxious to have as good mail facilities as they could possibly get, whether it was by one route or another.

Q. You know the business that was being carried on there, and the character of the people that were there. I wish you to state to the jury whether or not plenty of mail facilities and expedition was not only desirable, but necessary to their business.

Mr. BLISS. Do not answer that question. I do not care to argue it, but we raise an objection.

The COURT. I think you will have to confine yourself to the petition.

Mr. WILSON. All right, I will do that. May I read this petition to the jury?

The COURT. You may.

Mr. BLISS. Which one?

Mr. WILSON. I will read the first one.

Mr. MERRICK. He says he recognizes the names on the petition. When Mr. Wilson comes to read this petition I would like to cross-examine him a little further as to the signature.

Mr. WILSON. I have no objection to your doing so.

The COURT. These are papers brought from the department.

Mr. TOTTEN. I object to Mr. Merrick's cross-examining.

The COURT. Let them go in.

Mr. MERRICK. I am not going to object to their going in; but I want to ask some questions about the names.

The COURT. They go in on the other ground of coming from the department, on the ground that the department had these papers before it when it made the order.

Mr. WILSON. [Reading:]

ROSITA, COL.

Hon. D. M. KEY, *Postmaster-General*:

SIR: We have the honor to call your attention to the urgent necessity for an increase of mail service on the route from Pueblo to Rosita, Colorado.

This petition is signed by a large number of persons.

[The paper last read was marked by the clerk 23 L.]

Mr. MERRICK. When was it filed?

Mr. WILSON. It seems to have gone into the department of May, 1879.

Mr. MERRICK. The same day the affidavit went in.

Mr. WILSON. Very well. I do not care about that. I date. [Reading:]

Pueblo, Colorado—

Mr. BLISS. [Interposing.] Wait a minute; I object.

Mr. WILSON. I am about to read a petition he identifies

Mr. BLISS. He recognized certain names as those of there. How can that come in on a cross-examination on we raised?

The COURT. If you wanted to prove anything at all by was that the expedited service on this route was unnecessary. That was your aim in calling Mr. Gooch, and him in your own way on that subject. Now, the whole cross-examination is to develop that, in the opinion of a of the population of that country, an increased service and desirable, and that petitions were filed, setting forth and sent to the department, and upon those petitions made. It seems to me that that is proper.

Mr. BLISS. I am not going to argue it, but simply to that is on the same principle, there can be no limit to a tion whatever, and no distinction between the right of a tion and the right of the defense to put in new evidence.

The COURT. I do not think so.

Mr. WILSON. [Reading:]

PUEB

To the Hon. THOMAS BRADY,
Second Assistant P. M. General:

SIR: The undersigned have the honor to state that, in their judgment on the mail route between this city and Rosita now being run the

I concur in the above.

H. M. TELLER.

[The paper last read was marked by the clerk 24 I.]

Mr. MERRICK. When was it filed.

Mr. WILSON. It was filed on the 6th of May, 1879.

To the POSTMASTER-GENERAL,
Washington, D. C. :

The undersigned citizens of Pueblo, Colorado, beg to represent that the new mining towns of Silver Cliff and Rosita are more accessible to this place than to any other railroad point, and that you have ordered seven times a week mail service from Cañon City to Silver Cliff, while we have only a weekly line.

We urge that you place us on the same footing as Cañon City. This is the natural and proper outlet for all trade and travel to the places indicated, and with a fast schedule of, say ten or eleven hours, and seven times a week mail to Rosita, it would prove of vast importance to the people of both places.

We trust you will put this service on immediately.

Signed by a large number of people, and on the back of it this indorsement :

Respectfully referred to the Post-Office Department. This service as asked for is absolutely necessary, and I hope it will be ordered at once.

J. B. BELFORD.

I concur in the above.

H. M. TELLER.

[The paper last read was marked by the clerk 25 I.]

Mr. MERRICK. When was that filed ?

Mr. WILSON. That was filed on the 6th of May. I suppose when Mr. Belford and Mr. Teller filed these, they filed that petition at the same time.

Mr. MERRICK. They filed the affidavit of Dorsey at the same time.

Mr. WILSON. You can discuss that when your time comes.

Mr. BLISS. You provoked the discussion. We simply asked when they were filed.

Mr. WILSON. I have told Mr. Merrick when they were filed. I answered the question.

GENERAL BRADY,
Second Assistant Postmaster-General :

SIR : The undersigned citizens of Pueblo, Colorado, have the honor to respectfully but earnestly recommend to you the necessity of increasing the mail service on the route between here and Rosita to a daily line.

The extraordinary mining interest developing in this portion of Colorado, and the enormous increase of our population, and consequent increase and demand for proper and expeditious communication by mail, renders it necessary not only to increase this to a daily line, but to increase the speed also. It should be carried in half the time now occupied.

We hope this petition will receive speedy and favorable attention.

The petition is signed, among others, by Mr. Chilcott, now Senator. It is indorsed :

Respectfully referred to the P. O. Department within petition of citizens and business men of Pueblo, Col., with request that this service be put on.

JAMES B. BELFORD.

I concur in the above.

H. M. TELLER.

[The paper last read was marked by the clerk 26 I.]

Mr. MERRICK. When was that filed ?

Mr. WILSON. On the 6th of May, 1879. Mr. Teller or Mr. Belford sent them here with the rest of the petitions.

Mr. BLISS. You are testifying. That is not so.

Mr. WILSON. Then, why do you ask these questions?

Mr. MERRICK. I asked you when it was filed.

Mr. BLISS. The record shows when it was filed. It does not undertake to show who filed it. I undertake to say it was not filed by those gentlemen.

Mr. WILSON. We will settle this. [Reading indorsement.]

The within petition of citizens and business men of Pueblo, Colorado, respectfully referred to the Post-Office Department.

Mr. MERRICK. Certainly.

Mr. WILSON. [Continuing to read:]

This service is absolutely necessary, and I hope it will be ordered at once.

J. B. BELFORD.

Who sent that?

Mr. BLISS. If you ask me to testify, I can testify.

Mr. WILSON. I do not ask you to testify.

Mr. BLISS. Then don't you testify.

The COURT. He was your witness for that occasion and you had no right to impeach him.

Mr. BLISS. He was our witness your honor as to when it was filed, but we did not ask him who filed it. That was new evidence, not proper to come in on cross-examination.

Mr. WILSON. Do you want to cross-examine me further on that subject?

Mr. MERRICK. I will ask you another question. Do you know whose handwriting that is?

Mr. WILSON. No, sir.

Mr. MERRICK. Do you know Mr. Berdell's handwriting?

Mr. WILSON. I do not. I think it is Belford's signature. I have one more petition:

Hon. D. M. KEY,

Postmaster-General:

SIR: We have the honor to call your attention to the mail route between this place and Rosita, and to request that the service thereon be increased so as to make it a daily line and fast time.

This increase should have been made long ago, and now in view of the great influx of population [every train arriving here is loaded] and the vastly greater necessity now than ever before for these additional facilities—

Your petitioners hope you will order the increase asked for.

Signed by divers people and indorsed:

Respectfully referred to the P. O. Department. I hope this service will be increased as asked for, as the development of this part of the State is very rapid.

J. B. BELFORD.

I concur in the above.

H. M. TELLER.

[The paper last read was marked by the clerk 27 I.]

Mr. CARPENTER. When was it filed?

Mr. WILSON. May 6, 1879.

Mr. MERRICK. Do you know whose handwriting is on the back of it?

Mr. WILSON. I do not.

Mr. BLISS. I will now put in the tabular statement of payments on this route.

Mr. TOTTEN. I object to this as immaterial, your honor. It is the usual objection.

The statement is as follows:

Statement and recapitulation of payments made to Dorsey, Miner, and Peck, their subcontractors and assignees on nineteen routes below described.

Route.	Termini.		State.	Pay accrued.	Fines and discount, &c.	Remissions, &c.	Total payments.
	From—	To—					
1.....	Pueblo	Rosita	Colorado..	\$17, 096 25	\$2, 083 83	.....	\$15, 012 42

Route No.	Termini.		Auditor's report.		Period for which paid.	Pay per quarter.	Less fines and discounts.	Amount of payment.	Warrant or draft.		To whom paid.		
	From—	To—	No.	Date.					No.	Date.			
32134	Pueblo	Keola	Colorado	27576	Nov. 2, 1878	3 qr., 1878	97 00	.....	07 00	W. 11933	Nov. 12, 1878	H. M. Valle..	Assignee.
				2107	Jan. 23, 1879	4 qr., 1879	97 00	3 73	93 27	W. 14045	Jan. 25, 1879	H. M. Valle..	Assignee.
				15571	May 9, 1879	1 qr., 1879	97 00	.....	97 00	W. 4454	May 10, 1879	H. M. Valle..	Assignee.
				20408	July 24, 1879	2 qr., 1879	97 00	9 96	87 04	W. 6394	July 25, 1879	S. W. Dorsey, Middleton & Co.	Assignee.
				22905	Oct. 25, 1879	3 qr., 1879	1,762 87	454 95	1,307 92	W. 9398	Oct. 27, 1879	S. W. Dorsey, Middleton & Co.	Assignee.
				6096	Feb. 28, 1880	4 qr., 1879	2,037 00	.....	1,269 00	W. 2867	Mar. 1, 1880	S. W. Dorsey, J. W. Boaler.	Assignee.
				7360	Feb. 27, 1880	4 qr., 1879	.....	154 38	620 62	D. 3544	Mar. 5, 1880	Eli Hanson	Subcontractor.
				16351	May 13, 1880	1 qr., 1880	2,037 00	.....	1,269 00	W. 5174	May 15, 1880	S. W. Dorsey, J. W. Boaler.	Assignee.
				14696	May 3, 1880	qr., 1880	.....	134 66	640 34	D. 9331	June 1, 1880	Eli Hanson	Subcontractor.
				25944	Aug. 16, 1880	2 qr., 1880	2,037 00	.....	1,269 00	W. 9405	Aug. 18, 1880	J. W. Boaler.....	Assignee.
				25043	Aug. 16, 1880	qr., 1880	.....	257 42	517 58	W. 9618	Aug. 21, 1880	Eli Hanson	Subcontractor.
				20201	Oct. 25, 1880	3 qr., 1880	2,037 00	.....	1,269 00	W. 11328	Oct. 26, 1880	J. W. Boaler.....	Assignee.
				30167	Oct. 23, 1880	5 qr., 1880	.....	119 04	655 96	W. 11277	Oct. 25, 1880	Eli Hanson.....	Subcontractor.
				6655	Feb. 7, 1881	qr., 1880	2,037 00	.....	1,269 00	D. 3506	Feb. 7, 1881	J. W. Boaler.....	Assignee.
6368	Feb. 3, 1881	qr., 1880	.....	261 60	498 40	D. 3229	Feb. 3, 1881	Eli Hanson	Subcontractor.				
12562	April 22, 1881	qr., 1881	2,037 00	.....	1,269 00	D. 9254	April 23, 1881	J. W. Boaler.....	Assignee.				
12563	April 22, 1881	qr., 1881	.....	510 38	264 62	W. 5387	April 26, 1881	Eli Hanson	Subcontractor.				

I now offer a receipt, dated November 12, 1878, for warrant 11923, signed by H. M. Vaile, contractor.

Receipt dated January 25, 1879, for warrants 14085 and 14086, signed H. M. Vaile, contractor, by John R. Miner, attorney.

Receipt dated May 10, 1879, for warrant 4454, signed H. M. Vaile, contractor, by John R. Miner, attorney.

Receipt dated March 3, 1880, for warrants 2666 and 2667, signed by J. W. Bosler, assignee for contractor.

Receipt dated August 26, 1880, for warrants 9402 to 9405, signed by J. W. Bosler, for contractor.

Receipt dated August 24, 1880, for warrant 9618, signed by Eli Hansom, contractor.

Receipt dated October 30, 1880, for warrant 11328, signed by J. W. Bosler, for contractor.

Receipt dated November 26, 1880, for warrant 11277, signed by Eli Hansom, contractor.

Receipt dated August 12, 1881, for warrant 1716, signed by Eli Hansom, contractor.

Receipt dated April 29, 1881, for warrant 5289, signed by Eli Hansom, contractor.

Mr. WILSON. Why not just put them in without reading them ?

Mr. BLISS. We prefer to read them on occasions.

Mr. WILSON. It would do just as much good not to read them.

Mr. BLISS. I now offer the table of productiveness on this route.

The gross revenue of the post-office at Pueblo for the fiscal year ending June 30, 1881, was \$14,239.94; the net revenue, \$11,037.76.

For the post-office at Wetmore the gross revenue for the second quarter of 1881 was \$15.85; the net revenue, \$7.70.

For the post-office at Greenwood for the fiscal year ending June 30, 1881, the gross revenue was \$229.02; the net revenue, \$131.48.

For the post-office at Silver Park the gross revenue for the same period was \$72.07; the net revenue, \$29.30.

For the post-office at Comargo there is no account.

The gross revenue for the post-office at Rosita for the fiscal year ending June 30, 1881, is \$2,633.31; the net revenue, \$1,433.31.

The table in full is as follows :

Form of certificate.

OFFICE OF THE AUDITOR OF THE TREASURY FOR THE POST-OFFICE DEPARTMENT.

I, J. H. Ela, auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this office, showing the gross and the net revenues of the post-offices located on route No. 8134, Pueblo to Rosita, Colorado, from July 1st, 1878, to June 30th, 1881.

In testimony whereof I have signed my name, and caused to be affixed my seal of office, at the city of Washington, this 12th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.]

J. H. ELA, Auditor.

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Pueblo, Col.; supplied by railroad and on route No. 38135.	3 qr., 1878..	\$1,587 63	.....	\$987 63	.....
	4 " " ..	2,228 91	.....	1,528 91	.....
	1 qr., 1879..	2,148 39	.....	1,448 39	.....
	2 " " ..	2,308 88	.....	1,608 88	.....
		<u>8,273 81</u>	.....	<u>5,473 81</u>	.....
	3 qr., 1879..	2,697 23	.....	1,997 23	.....
	4 " " ..	2,394 42	.....	1,694 42	.....
	1 " 1880..	2,366 08	.....	1,666 08	.....
	2 " " ..	2,997 73	.....	2,297 73	.....
		<u>10,455 46</u>	.....	<u>7,655 46</u>	.....
	3 qr., 1880..	3,483 29	.....	2,756 29	.....
	4 " " ..	3,040 12	.....	2,315 12	.....
	1 " 1881..	3,943 34	.....	3,218 34	.....
	2 " " ..	3,778 19	.....	3,046 01	.....
		<u>14,239 94</u>	.....	<u>11,037 76</u>	.....
Wetmore, Col.; established, April 19th, 1881.	3 qr., 1878..	.....	.....	.....	.....
	4 " " ..	.....	.....	.....	.....
	1 " 1879..	.....	.....	.....	.....
	2 " " ..	.....	.....	.....	.....
	3 qr., 1879..	.....	.....	.....	.....
	4 " " ..	.....	.....	.....	.....
	1 " 1880..	.....	.....	.....	.....
	2 " 1880..	.....	.....	.....	.....
	3 qr., 1880..	.....	.....	.....	.....
	4 " " ..	.....	.....	.....	.....
	1 " 1881..	.....	.....	.....	.....
	2 " " ..	15 85	.....	7 70	.....
		<u>15 85</u>	.....	<u>7 70</u>	.....
	3 qr., 1878..	21 95	.....	9 91	.....
	4 " " ..	25 99	.....	13 32	.....
Greenwood, Col.; also, on route No. 38169 ..	1 " 1879..	37 66	.....	16 99	.....
	2 " " ..	43 92	.....	12 07	.....
		<u>129 52</u>	.....	<u>52 29</u>	.....
	3 qr., 1879..	39 99	.....	76	.....
	4 " " ..	47 16	.....	23 03	.....
	1 " 1880..	60 36	.....	32 83	.....
	2 " " ..	57 24	.....	31 82	.....
		<u>204 75</u>	.....	<u>82 55</u>	.....
	3 qr., 1880..	53 18	.....	25 78	.....
	4 " " ..	71 73	.....	45 43	.....
	1 " 1881..	56 58	.....	35 17	.....
	2 " 1881..	47 59	.....	25 10	.....
		<u>229 02</u>	.....	<u>131 48</u>	.....
	3 qr., 1878..	.....	.....	.....	.....
	4 " " ..	.....	.....	.....	.....
Silver Park, Col.; established July 28, 1879; discontinued Feb. 10, 1881.	1 " 1879..	.....	.....	.....	.....
	2 " " ..	.....	.....	.....	.....
	3 qr., 1879..	9 30	.....	5 20	.....
	4 " " ..	25 21	.....	7 46	.....
	1 " 1880..	.....	.....	.....	.....
	2 " " ..	37 56	.....	16 04	.....
		<u>72 07</u>	.....	<u>29 30</u>	.....
	.....	.....	No account	.....	.....
Comargo, Colorado; established April 19, 1881; discontinued Oct. 31, 1881. Rosita, Colorado; also supplied by routes 38132 and 38157.	3 qr., 1878..	352 81	.....	148 11	.....
	4 " " ..	651 26	.....	401 26	.....
	1 " 1879..	519 40	.....	289 40	.....
	2 " " ..	526 78	.....	276 78	.....
		<u>2,050 25</u>	.....	<u>1,095 55</u>	.....
	

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
	3 qr., 1879..	\$567 28	.....	\$317 28	.....
	4 " " ..	588 47	.....	338 47	.....
	1 " 1880..	683 63	.....	383 63	.....
	2 " 1880..	816 21	.....	516 21	.....
		2,655 59	.....	1,555 59	.....
	3 qr., 1880..	708 14	.....	408 14	.....
	4 " " ..	659 99	.....	359 99	.....
	1 " 1881..	622 35	.....	322 35	.....
	2 " " ..	642 83	.....	342 83	.....
		2,633 31	.....	1,433 31	.....

Mr. WILSON. I wish you would bring in the power of attorney that was executed by Mr. Vaile for Mr. Miner to sign these receipts.

Mr. BLISS. I have no custody of any such power of attorney, and never have seen it.

At this point (3 o'clock and 5 minutes p. m.) the court adjourned until to-morrow morning at 10 o'clock.

THURSDAY, JUNE 29, 1882.

The court met at 10 o'clock and 5 minutes a. m.

Present, counsel for the Government and for the defendants.

W. WALTERS sworn and examined.

By Mr. BLISS :

Question. Where do you reside ?—Answer. Fremont County, Colorado.

Q. Have you ever lived at Greenwood ?—A. Yes, sir.

Q. When did you live there ?—A. In 1880.

Q. How long ?—A. I lived there something over twelve months.

Q. Did you hold any position there ?—A. I was postmaster there a few months.

Q. How long were you postmaster ?—A. From April to November, I never; as well as I remember.

Q. [Submitting a letter.] Look at this letter marked 15 I, and see if you ever saw it before ?—A. [After examining the letter.] Yes, sir.

Q. Was that letter written by you ?—A. Yes, sir.

Q. I find it on the files of the Post-Office Department; was it sent to you by the Post-Office Department ?—A. Yes, sir.

Q. Are the statements in that letter correct ?—A. Yes, sir.

By the COURT :

Q. What was the name of your office ?—A. Greenwood. It is about halfway between Pueblo and Rosita.

By Mr. BLISS :

Q. How large a place is Greenwood ?—A. A store and a blacksmith shop; that is about all.

No. 14336—79

Q. There is considerable farming about there, sir; mostly farming; that is all.

Q. You resigned as postmaster, did you not?

Q. At the time you were postmaster was Florence to Greenwood?—A. Yes, sir.

Q. How far is Florence from Greenwood?—they call it.

Q. Is Florence on the railroad?—A. Yes, sir.

Q. Did the mail from Pueblo to Greenwood on the way to Rosita, or did it go around by 1 of it came through.

Q. On the direct road?—A. Yes, sir; most all of it. I think the biggest run of it, as well.

Q. How about the mail coming from the Greenwood?—A. We got more eastern mail, I route.

Q. How much mail did you use to get at G mail was light.

Mr. WILSON. If your honor please, what I matter?

The COURT. I suppose it is one of the circum

Mr. WILSON. One of the "other circumstan

Mr. TOTTEN. "Productiveness and other ci

Q. What was the average amount of the ma from Pueblo and regions to the eastward?

The WITNESS. Do you mean in pounds?

Mr. BLISS. Yes; give it in pounds.

A. There were some weekly papers. I ca would average a day. I don't think the paper over ten pounds.

By the COURT:

Q. That is, including papers, letters, and me

A. Well, I think it might run something over some packages. Well, I might say fifteen pou cover it all; I am sure it would.

By Mr. BLISS:

Q. Was the mail delivered regularly at Gree was not regular there. We had to go throu going up and down.

Q. Did it come regularly?—A. No; it did n

Q. What do you mean by not coming regu

A. Well, it would be delayed sometimes.

Q. On the route from Florence to Greenwo made a week?—A. Three trips.

Q. Do you know what time it took?—A. I t in a day. [Correcting himself.] You mean F

Mr. BLISS. Yes; coming down from the rail

A. Oh, I should think two hours.

Q. Was that a three times a week route?—

By the COURT:

Q. That was ten miles?—A. Yes, sir. They and I should think they would make it in t really just what their time was.

Mr. BLISS. That is all.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. When did you come to Washington?—A. The first of May. I got here the night of the 7th, I believe.

Q. Have you been here ever since you came?

The WITNESS. Have I been here ever since I came?

Mr. WILSON. Have you been here ever since the first of May, when you say you came here?—A. Yes, sir. I have taken some little excursions.

Q. Have you been here before on this business?—A. I was here last winter.

Q. How long were you here, then?—A. About nine days, as well as I can remember.

Q. That was to go before the grand jury?—A. Yes, sir.

Q. How far is it from where you live to this place?—A. About two thousand miles; I don't know if it is quite that.

Q. Greenwood is a sort of a way station on this route, is it not?—A. Yes, sir; that is about near the center of the route.

Q. And it was surrounded by a farming community?—A. Yes, sir; on one side; and mountains on the other.

Q. There was not much mail at your place, but the bulk of the mail went through from Pueblo to Rosita, did it?—A. There was not a great deal of through mail.

Q. But the bulk of what there was went through?—A. No; I think they got the most of their mail on the other route.

Q. I am speaking of the mail that went over this route.—A. I think there was more mail taken out at our office, really, than there was that went through.

Q. You think so?—A. Yes, sir.

Q. Then these other witnesses that have testified must have been mistaken.

The COURT. Never mind. Each witness is to stand upon his own testimony.

Mr. WILSON. Very well; I withdraw that question.

Q. There was a little trouble about the location of the office, was there not?—A. Yes, sir; a little at one time. They didn't deliver the mail there at one time for three weeks, I guess.

Q. What was the matter?—A. Well, the site of the office was moved.

Q. Who moved the site of the office?—A. I did.

Q. You took the office away from where it had been, and they continued to deliver the mail at the place where the office had been?—A. They stopped there awhile. They delivered it awhile, and then they pulled off awhile; and they come around with it again, after three or four weeks.

Q. You had a grievance about that with the contractor, did you?—A. Yes. The parties that were carrying the mail at the time I removed the site of the office agreed to deliver the mail——

The COURT. [Interposing.] We are not talking about an agreement, it is a grievance.

The WITNESS. Oh.

Q. How far did you move this office?—A. I moved it down the road about a mile and a half.

Q. You wanted the carrier to go down there for your accommodation, did you?—A. Well, not for mine particularly.

Q. You took it off the line of travel about a mile and a half, did you?

A. Well, it was not off of the line of travel, real that circled around two sections of land coming and a half above. They are both county roads, traveled each way. It was hard to tell, really, whether.

Q. You took the office off on to this other carrier to go around that way?—A. Yes, sir; that was to keep the office up where it was. There was no site of the office has been moved every time that it has been moved half a dozen times.

Q. You moved on to a farm, did you?—A. .

Q. What was it?—A. It was a little trading posts about a mile and a half apart, blacksmith's shop at each one.

Q. And you thought if there was a store there the carrier could just as well come the other way and blacksmith shop?—A. There was very little business on the routes.

Q. There was a difference?—A. There might have been.

Q. But there was a difference?—A. I suppose there was.

Q. And the carrier insisted on going his way?—A. Yes, sir.

Q. And you wanted him to go the other way?

Q. And because he did not go around that way to the department, did you not?—A. Well, my attention was drawn to the fact by their not delivering the mail, that they got along nicely without it.

Q. You got along without any mail?—A. Yes.

Q. And because the carrier would not come where you wrote this letter to the department, did that the way my attention was drawn to the mail?—A. Along just as well without it.

Q. Inasmuch as the carrier would not come where you had taken mail, and inasmuch as more, because the carrier did not come around where you could get along without it?—A. We were going on the other route.

Q. But the mail that came over this route by the carrier did not come there?—A. It came to the office.

Q. It did?—A. Yes, sir; that office is supposed to be on the route entirely.

Q. Certainly; because they have discontinued the route?—A. Yes, sir; they have now.

Q. They have got the railroad built now and do not need it any more, is that the fact?—A. The railroad at Rosita.

Q. How far are they from Rosita? Will you answer the witness. Which?

Mr. WILSON. The railroad. How far is it?

A. We had a railroad at Cañon City then.

Mr. WILSON. Oh, now, my dear, sir.

A. [Continuing.] Seven or eight miles from Rosita.

Q. You can understand a plain question, can you, sir?

Q. The question is, how far the road was from Rosita or nine miles, I think.

Q. When you got the railroad around there they discontinued the service, did they not?—A. Yes, sir; they have discontinued it since.

By the COURT:

Q. Let me understand. The railroad is now at Silver Cliff, is it?—A. Yes, sir.

The COURT. And that is seven miles from Rosita?

Mr. WILSON. Yes; some of the witnesses say so. It don't make any difference about a mile. We won't be mean about that.

Q. You say here in this letter, which has been read, I believe—

Mr. BLISS. Yes.

The COURT. I haven't heard the letter.

Mr. BLISS. The letter was read yesterday, and is in the record.

Q. [Continuing and quoting from letter:]

We have received no daily mail by route 38134 since April 30, 1880.

This letter was written the 8th of May, 1880. That was the time that the carrier was refusing to go down there to where you had moved the post-office, was it?—A. Yes, sir.

Q. Now I will proceed:

It having been carried to the former location of the office.

So the carrier was taking the mail there, was he?—A. Yes, sir; at that time.

Q.—

While this office is located on the route on which the contract was let, they have persistently refused to deliver it here.

That is not exactly the fact, is it, if you mean by "this office" the place where you had taken the office to?—A. As I told you, I moved the site of the office.

Q. This is not strictly correct then, is it?—A. I thought it was.

Q. What do you think now?—A. Well, I don't know about the routes really, as I told you, which was the original route. There was a dispute among the old settlers which was the route. As I told you, the two roads circled around I think, two sections of land.

Q. Making a mile and a half or so of difference in the travel. When you said to Colonel Bliss awhile ago that the matters stated in this letter were true, you were not exactly sure about it, were you, or at least you are not exactly sure about it now.

The witness did not reply.

Mr. BLISS. He does not understand.

Mr. WILSON. Oh, yes, he does.

The WITNESS. As far as the route is concerned it is just as I told you.

Q. You are not clear in your mind about it, are you?—A. It is [hesitating]—

Mr. WILSON. All right; you may pass that over.

Q. They did not persistently refuse to deliver it at the old site of the office did they?—A. No, sir.

Q. You say here:

Both myself and postmaster at Rosita, Custer County, Colorado, also P. M. Ingersoll at Pueblo consider it a useless and expensive route to the Government as this office is the principal one on route 38134, and can be and is now supplied, &c.

A. I know that that was their opinion about it, after interviewing them.

Q. Were you aware of the fact that Mr. Gooch had earnestly recom-

mended an increase of service and expedition on this route?—A. Yes, sir; I know he did.

Q. And you knew that a great many other people did the same thing, did you not?—A. Yes, sir.

Q. And you set up your judgment against all these good people of Pueblo and Rosita?—A. No, sir; that was their opinion. It was just in this way: Mr. Gooch was led to believe that a through eastern mail would come through that route as he told you yesterday; but it did not; it was made up back on the road and went the other way, and they were not benefited like they expected after signing the petitions.

Q. You know those people out there pretty generally, do you not?—A. I know a good many; yes, sir.

Q. Those are pretty good sort of people, are they not?—A. Yes, sir.

Q. They are gentlemen upon whose judgment you would be willing to rely with reference to a matter that you had no personal knowledge of?—A. Yes, sir.

Q. And you think they are a class of men that the Second Assistant Postmaster-General could safely rely upon in regard to the conduct of his business, do you?

Mr. MERRICK. Do not answer the question until the court tells you. I object.

The COURT. This is cross-examination.

Mr. BLISS. We have not touched the petitioners or said a word about the petitioners.

The COURT. I know that; but the cross-examination is in regard to the facts or opinions stated in that letter.

Mr. BLISS. No, sir. He says, "You think certain petitioners who signed a petition are good men, and men upon whom the Second Assistant Postmaster-General had a right to rely." What has he to do with the question of whether or not the Second Assistant Postmaster-General may rely upon those men.

Mr. WILSON. He says they are good men.

The COURT. He is speaking to the character of these petitioners.

Mr. BLISS. We are not objecting to that; but when he asks whether they are people upon whom the Second Assistant Postmaster-General might rely, I think that is asking for an expression of opinion.

The COURT. That is a matter of opinion. The question is objectionable on that ground.

Mr. MERRICK. My objection was upon the ground that he was asked to give us his opinion of these men when the Postmaster-General probably had nothing before him but the petition itself, and may not have known anything about these men. As I understand, the petition alone was there. Mr. Wilson is trying to strengthen the force of that petition by proving the character of the men who signed the petition. The petition speaks for itself.

The COURT. The character of the petitioners, as I understand, was indorsed by the Representative here.

Mr. WILSON. And by Mr. Gooch.

Mr. MERRICK. That was before the Postmaster-General. This man's opinion was not.

The COURT. I shall allow the question.

Mr. WILSON. [To the witness.] What do you say?

A. My acquaintance about Rosita and Pueblo is not very extensive; but I know Mr. Gooch, and I have met Mr. Ingersoll. Mr. Gooch is a good man.

Q. Do you know these men who signed these petitions?—**A.** I know some of them; yes, sir.

Q. Did you see the petitions?—**A.** I saw the Rosita petition. I am not very well acquainted in Pueblo; but I know quite a number of men in Rosita. I am acquainted with the sheriff there. He lives at Rosita. Just read the names to me.

The COURT. Oh, well, we cannot go over these names particularly. You can show him the signatures on the paper.

Mr. WILSON. That is all I am going to do, your honor [Showing witness petition marked 23 I.] There is the Rosita petition indorsed by Mr. Gooch.

The WITNESS. [After examining the petition.] I know some of those.

Q. Are they reputable gentlemen?—**A.** Yes, sir; as far as I know.

Q. Are they men upon whom the Second Assistant Postmaster-General might with propriety rely?

Mr. MERRICK. I object to the question.

Mr. WILSON. Very well. I withdraw it.

Q. Did you get authority from the department to move that post-office?—**A.** No, sir.

Q. Do you not know you had no right to move it without the authority of the Government?—**A.** I did not know it at the time.

Q. You found it out since did you?—**A.** Yes, sir.

Q. Let me ask you another question: Do you not know that up to the time this service was increased and expedited on this route that there was no service from Cañon City down to Rosita?—**A.** No, sir; I do not know that. That route was established when I moved to the country there.

Q. When did you move to the country?—**A.** I moved there in August, 1879.

Q. You say you moved there in what month?—**A.** August, 1879.

Q. Do you know whether there was any service between Cañon City and Rosita before the railroad was run down there?—**A.** I do not.

Q. Was there any service between Pueblo and Cañon City before the railroad was run up there?

Mr. BLISS. Run up to where?

Mr. WILSON. Cañon City.

A. The road was up to Cañon City when I moved to the country there.

Mr. WILSON. I guess that is all we want with you.

REDIRECT EXAMINATION.

By **Mr. BLISS**:

Q. You say that that post-office had been moved with each change of postmasters?—**A.** Yes, sir.

Q. When you were appointed postmaster, how soon did you move the position of the office?—**A.** I moved it right away.

Q. What do you mean by right away?—**A.** In a few days.

Q. After you moved it, was the mail brought to the post-office?—**A.** Yes, sir; for about three weeks.

Q. And then it stopped?—**A.** It stopped awhile; yes, sir.

Q. And then after that it was restored and brought there again?—**A.** Yes, sir.

Q. And continued to be brought there, did it?—**A.** Yes, sir.

Q. You said that for about three weeks you were without the mail. They did not bring the mail there?—**A.** No, sir.

Q. During that time how did you get your mail?—A. We got it through the other route.

Q. I understood you to say that that led you to consider the question of the necessity of this route?—A. Yes, sir.

Q. And you thereupon wrote that letter?—A. Yes, sir.

Q. Were you, in writing that letter, influenced by anything else than your own judgment and the judgment of the other two postmasters whom you referred to as to the necessity for the route?—A. No, sir.

Mr. WILSON. I object.

The COURT. The question is answered.

Q. I understand you to say that when the petitions were circulated for increase and expedition on that route it was supposed that the through mail from beyond Pueblo would come over that route?—A. Yes, sir.

Q. And it was found not to come over?—A. Yes, sir.

Mr. BLISS. That is all.

Mr. WILSON. Now, Colonel Bliss, I want to call your attention and the attention of the court, to a matter in connection with that jacket which had upon it the words "See memorandum inclosed." Here is the paper. [Producing paper.] It is the paper that you proved in the handwriting of Mr. Turner.

Mr. BLISS. I suggested to you that it might be, but if you will look at this letter you will see that it is impossible. That letter is dated May 8, 1880, and was in that jacket which is a jacket made July 8, 1879. The memorandum inclosed could not have been that paper.

Mr. WILSON. It is just the other way. When this jacket was made up, Mr. Turner, quoted from this letter on the back of this memorandum. Now, here come all these petitions and then the whole thing goes to the Second Assistant Postmaster-General. Mr. Turner quoted from this letter right on this jacket.

Mr. BLISS. Your honor, I do not care to argue it, but here is a jacket without date, which says, "The postmaster at Greenwood, the only intermediate office on the route" states so and so. On that is indorsed considerable more. The letter from which that quotation is made is this letter of May 8, 1880, as I understand it.

Mr. WILSON. As I understand it, it is just this way—

Mr. BLISS. [Interposing.] Wait a minute, Mr. Wilson. This letter is not the letter that was in that jacket. You will find that it is not. Therefore you may be right. The quotation is not in that letter. I do not care to argue it. I simply called Mr. Wilson's attention yesterday to the fact that the jacket said, "See memorandum inclosed," and I never have been able to find any memorandum inclosed. When I found the jacket without date, I suggested to him that it was possible that that jacket was the paper that was inclosed. I do not know the fact. It was not inclosed when it came to me, but was loose among other papers.

Mr. WILSON. I am not complaining about that, but I simply want to have it understood.

Mr. BLISS. You can make an argument from the facts when the time comes.

Mr. WILSON. No. Colonel Bliss has made a statement in regard to it, and I want to have the thing understood properly right here. As I understand it, it is just this way: this letter was in that jacket.

Mr. MERRICK. Which letter?

Mr. WILSON. The one Colonel Bliss just had.

Mr. BLISS. Wait a moment. Let me call your attention to another

etter which I hold here, which contains the precise passage quoted on the outside of that jacket. I am going to read it to you. Here is a letter dated March 17, 1879, and which, therefore, could have been inclosed in that jacket. It contains the passage quoted on the outside of the indated jacket.

The COURT. Put it in the jacket and let us go on.

Mr. WILSON. All I wanted to say was this, that Mr. Turner made that indorsement, and quoted from the letter.

The COURT. He quoted from a letter.

Mr. WILSON. Then these petitions come in and the whole thing goes to the Second Assistant and he writes "Do this—Brady," upon the whole thing.

Mr. McSWEENEY. Put it away and indorse *hic jacet* upon it.

Mr. MERRICK. That is the Irish of jacket.

Mr. BLISS. That is all on this route at present.

I take next, route 38140. The contract was made on the 15th of March, 1878, between John R. Miner and the Government, for carrying the mail on route 38140, from Trinidad, Colorado, by Barela and San José to Madison, New Mexico, and back once a week, for \$338 per year. It is signed by John R. Miner, on the 23d of March, 1878, before A. E. Boone, notary. The schedule time is to leave Trinidad Friday at 6 a. m., and arrive at Madison by 7 p. m. Leave Madison Saturday at 6 a. m., and arrive at Trinidad by 7 p. m.

Mr. HENKLE. I object on the part of Miner that that contract has not been proved, and desire to note an exception.

Mr. BLISS. At the outset of the case all these contracts were proved.

Mr. HENKLE. Proved to be in the handwriting of Mr. Miner?

Mr. BLISS. Proved in such a way that the court said they were proved.

Mr. HENKLE. I reserve an exception.

The COURT. Very well. Independently of other grounds for the admission of this paper there are papers in evidence in this case admitted to be in the handwriting of Miner, and the jury can compare this signature with those if they choose.

[The paper just read was submitted to the clerk to be marked, and was by him marked 1 K.]

Mr. BLISS. I now read a letter which is as follows:

RATON, LAS ANIMAS COUNTY, COLORADO,
September 18th, 1878.

To the P. M. GENERAL:

DEAR SIR: A post-office was established at this place in March last and I was appointed P. M. This office was established to accommodate the lowermost section of a rich valley 35 miles in length, extending eastward from the town of Trinidad, but no mail service has yet been ordered.

The community to be accommodated has for two years past received their mail from Trinidad, 22 miles distant, in a private sack at great inconvenience.

The people here (cattle men mostly) have business transactions to the extent of certainly not less than fifty thousand dollars annually. They have one school and church building costing two thousand dollars; one high school, 51 pupils enrolled, one resident clergyman; well improved farms, with Government title, etc.

The newly finished branch of the Atchison, Topeka and Santa Fé Railroad passes within ten miles of Raton P. O. Pulaski P. O. is twelve miles distant from Raton and directly on this line of railroad.

The object of this communication is to petition for mail service twice a week, if not from any central point to Raton, at least from Pulaski P. O. on the A., T. & S. F. R. R. to Raton, a distance of twelve miles.

Very respectfully,

S. W. DEBUSK, P. M.

CENTRAL CIT

Respectfully requested that prayer of this petition be
 creased as asked for.

[The letter just read was submitted to the
 identification, and was by him marked 2 K.]

The next is a jacket, and is as follows:

Date, June 6th, 1878. State, Colorado.

Number of route, 38140.

Termini of route, Trinidad and Madison.

Length of route, 45 miles.

Number of trips per week, one.

Contractor, J. R. Miner.

Pay, \$338 per annum.

Round Valley, est. February 1, '78.

That is in red ink. Now in black:

Embrace Raton, next after Trinidad, from July 1, 187
 or pay.

[The jacket just read was submitted to the
 was by him marked 3 K.]

The next is a distance circular:

U. S. Post-O
 OFFICE OF THE SECOND ASSISTANT
 Wau

SIR: To preserve accuracy in the route books of the
 General requests the insertion in the columns below of
 offices on Colorado route No. 38140, between Trinidad
 the order in which they are situated, with the distance

Each postmaster will give the distance of his office fr
 preceding, certifying the same by his signature. Fulfill
 the paper without delay to this office.

Respectfully, &c.,

Second

P. M., Trinidad, Las Animas Co., Colorado.

From—	To—
Distance from Trinidad.....	To Barela ..
Distance from Barela.....	To San José ..
Distance from San José.....	To Madison ..

Annexed to that is a similar petition add
 Washington, D. C., contractor. That is filed

From—	To—
Distance from Trinidad.....	To Barela ..
Distance from Barela	To Raton ..
Distance from Raton	To San José ..
Distance from San José	To Madison ..

This is indorsed as received at the Post-Offi
 11, 1878.

[The paper just read was submitted to the clerk to be marked, and by him marked 4 K.]

The next is a jacket, as follows :

Date, November 13, 1878. State, Colorado.

No. of route, 38140.

Termini of route, Trinidad and Madison.

Length of route, 45 miles.

Number of trips per week, one.

Contractor, John R. Miner.

Pay, \$338 per annum.

The office of Raton was embraced on this route from July 1, 1878, without change of distance or pay. It now appears from D. C. that the distance was actually increased 1 mile. Contractor now asks pro rata pay for increased distance. (See D. C.)

That is all in red ink. Now in black:

Modify order of June 6th, 1878, number 4215, so as to increase distance 23 miles, and contractor's pay \$172.75 per annum, being pro rata.

FRENCH.

[The jacket just read was submitted to the clerk to be marked, and as by him marked 5 K.]

The next is a jacket, and is as follows :

Date, 1879, Jan. 6th. State, Colo.

Number of route, 38140.

Termini of route, Trinidad and Madison.

Length of route, 63 m.

Number of trips per week, one.

Contractor, John R. Miner.

Pay, \$510.75.

Schedule desired as below :

L. Trinidad Friday at 6 a. m.

A. San José by 6 p. m.

L. San José Sat. at 6 a. m.

A. Madison by 12 m.

L. Madison Sat. at 1 p. m.

A. S. José by 7 p. m.

L. San José Sunday at 6 a. m.

A. Trinidad by 6 p. m.

Change as above.

BRADY.

[The jacket just read was submitted to the clerk to be marked, and as by him marked 6 K.]

Inside is a schedule, which is as follows :

U. S. POST-OFFICE DEPARTMENT,

CONTRACT OFFICE.

Washington, November 13th, 1878.

SIR: A change of schedule is desired on mail route No. 38140, on which John R. Miner, is the contractor, because addition of Raton office increases the distance.

The service is once a week.

Be careful to allow no more than 19 hours running time each way.

That is not signed by anybody. Annexed is a schedule. It is the same schedule as is ordered on the back, and is signed by H. A. Barnaugh, postmaster at Trinidad; Jerome G. Abbott, postmaster at San José; Michael Derry, postmaster at Madison; John R. Miner, contractor; and is dated November 13, 1878.

[The paper just read was submitted to the clerk to be marked, and as by him marked 7 K.]

At the foot of 3 K, which I did not read, is the following :

Order number 4215. Date, June 6th, 1878.

I pass the distance circular to the court. [Submitting paper to the court.] It is a matter of handwriting entirely.

Mr. WILSON. Now, I want to make a suggestion, if your honor please, in order that this matter may be intelligible. The counsel for the Government has given to the jury this map, and I think that map ought to be explained to them, so that they will understand it.

Mr. BLISS. The map has been proved already as a sketch map.

The COURT. Some of this evidence antedates the route as laid down in this map.

Mr. WILSON. Certainly.

Mr. BLISS. Yes, sir. When I come to put my witnesses on the stand I propose to question them in connection with that.

Mr. WILSON. We want the opportunity to have this matter explained. I object to the jury having it. In fact I prefer they should not.

The COURT. I take it for granted the necessary explanation of this map will be made before we get the route.

Mr. BLISS. Yes, sir.

[The paper marked 7 K was submitted to the jury for inspection.]

The COURT. That paper is offered in evidence with reference to the handwriting.

Mr. BLISS. I call their attention to it. It is offered on the schedule, sir. I simply call their attention to the handwriting of the sheet annexed. The next is an order:

Reduce running time from 19 and three-quarter hours to twelve hours, and allow the contractor \$2,758.05 per annum additional pay, being pro rata from May 19th, 1879.
BRADY.

The COURT. Reduce it from nineteen hours to twelve? There never were nineteen hours on this route.

Mr. BLISS. There never were nineteen hours, sir, but after they made the addition of Raton, crooking the road around by that place, then you will see by the distance circular that there was some distance added, and then by the schedule there was time added, which ran it up by that addition to nineteen and odd hours, and then followed expedition restoring it to its former rate.

The COURT. Formerly it was twelve hours; now it is twelve?

Mr. BLISS. It was thirteen, and then what was alleged to be twenty-three miles was added to the distance, and on account of that it was put up to nineteen hours, and then expedition came and it was reduced to twelve or thirteen hours.

[The order just referred to was submitted to the clerk to be marked, and was by him marked 8 K.]

The next is a jacket, as follows:

Date, November 11th, 1879. State, Col.

Number of route, 38140.

Termini of route, Trinidad and Madison.

Length of route, 68 miles.

Number of trips per week, three.

Contractor, John R. Miner.

Pay, \$4,290.30 per annum.

Notify the Auditor of the Treasury for the Post-Office Department, that the subcontract of S. W. Dorsey (whose post-office address is Washington, D. C.), for service on this route, at \$4,290.30 per annum, from October 1st, 1879, to June 30, 1882, has been filed in this office, subject to fines and deductions.

FRENCH

[The paper just read was submitted to the clerk to be marked, and was by him marked 9 K.]

Mr. WILSON. [Submitting 8 K to Mr. Bliss.] Before you go further, I want to say that you did not read this jacket.

Mr. BLISS. I read the order. That is all I put in. It is an order signed by Brady. I put in no other portion of the paper at all.

Mr. WILSON. If your honor please, I think we are entitled to all that is on this paper.

Mr. MERRICK. We can bring the order on the book, for that matter.

Mr. WILSON. They bring this paper here.

Mr. BLISS. The order is a separate and detached writing.

The COURT. The ruling yesterday did not apply to a single paper, a part of which was given in evidence. When a single paper is given in evidence the whole should go in.

Mr. BLISS. Everything upon it should be read?

The COURT. Everything upon it should be read.

Mr. BLISS. Your honor will perceive that whatever is on there is by somebody else. We have no objection to it.

Mr. WILSON. You were careful to prove that somebody else wrote it.

Mr. BLISS. The paper marked 8 K is indorsed as follows :

Date, May 9th, 1879. State, Colorado.

Number of route, 38140.

Termini of route, Trinidad and Madison.

Length of route, 68 miles.

Number of trips per week, three.

Contractor, John R. Miner.

Pay, \$1,532.25 per annum.

Hon. James B. Belford, M. C., and Hon. J. B. Chaffee, recommend that the running time on this route be reduced. **Hon. J. B. Belford** states that "the time mentioned in the present schedule should be shortened or reduced so that the mail may get through the same day it is sent." There are four offices on the route that would be benefited by the expedition of schedule.

John W. Dorsey submits sworn statement in regard to number of men and animals on present and proposed schedule.

Expedition, from 19 and three-quarters to twelve hours.

Expedition, \$2,758.05 per annum.

All that is in red ink. Then follows in black ink what I read before, which is :

Reduce running time from nineteen and three-quarter hours to twelve hours, and allow contractor \$2,758.05 per annum additional pay, being pro rata, from May 19, 1879.
BRADY.

Now, in the last jacket which I read, which was marked 9 K, is the subcontract, as follows :

Whereas John R. Miner has been accepted according to law, as contractor for transporting the United States mails on route No. 38140, from Trinidad to Madison, State of Colorado, one time a week and back, from July 1, 1878, to June 30th, 1882, by the United States Post-Office Department :

Now this indenture witnesseth that on this first day of April, 1879, John R. Miner, party of the first part, and S. W. Dorsey, of Washington, D. C., party of the second part, have agreed as follows, to wit :

The said S. W. Dorsey, party of the second part, undertakes, covenants, and agrees, and does bind himself to transport the U. S. mails on route 38140, from Trinidad to Madison, one trip per week, from the 1st day of July, 1879, to the 30th day of June, 1882, for an annual sum of \$338.

The party of the first part "receiving 100 per cent. of pro rata as full compensation for said extension or increase of service, and the foregoing clause applies to all increase," subject to fines and penalties. The contract is signed by John R. Miner, United States Government contractor, and by S. W. Dorsey, subcontractor, and witnessed by M. C. Berdell.

Mr. HENKLE. What is the date of that?

Mr. BLISS. This contract is dated April 1, 1879, filed on the 11th of November, 1879.

The COURT. I thought you read it as a contract S. W. Dorsey.

[The paper just read was submitted to the court by him marked 10 K.]

Mr. BLISS. The next paper is a jacket, and it contains the following:

Date, December 7th, 1880. State, Colo.

No. of route, 38140.

Termini of route, Trinidad and Madison.

Length of route, 69 miles.

No. of trips per week, three (3).

Contractor, J. R. Miner.

Pay, \$4,290.30 per annum.

Subcontractor, S. W. Dorsey.

Pay, \$4,290.30 per annum.

Contractor and subcontractor request withdrawal of case bearing this date on route No. 38102.

That is in red ink. Now, in black:

From January first, 1881, stop all payment to subcontractor having requested withdrawal of subcontract.

On page 494 of the record there was proved on another route the order of Mr. Miner, directing that to Madison, all communications should be sent to M. C. Rerdell, box 706, Washington, D. C. marked 2 B at the time.

Mr. HENKLE. Before you proceed further, the paper just put in evidence contains this:

Contractor and subcontractor request withdrawal of case bearing this date on route No. 38102.

Now I want that paper.

Mr. MERRICK. Can we not put in our evidence?

Mr. HENKLE. You cannot put in evidence that paper here referring to another as the foundation of your honor, they cannot segregate the case and introduce the paper upon which this is based without putting it in. I want to see that paper.

The COURT. As that paper is referred to by the contractor it is amongst the papers it ought to be in.

Mr. BLISS. We cannot put in two papers as evidence, sir, that when I found out, after I got into court, that the papers not here, I sent to the Post-Office Department in momentary expectation that a messenger would bring them.

Mr. HENKLE. I submit to the court that it is not proper to put in evidence a paper without putting in the paper which it is introduced.

Mr. BLISS. This is the merest sham in the world, authority to withdraw the subcontract. I have no objection.

Mr. HENKLE. I submit that this evidence should not go in until this other paper is produced.

The COURT. It goes in subject to the—

Mr. BLISS. [Interposing.] If there is a paper by Miner, and Brady made an order upon it, I will have it in evidence.

Mr. HENKLE. I do not know about that. V

The COURT. You will see it in time.

Mr. HENKLE. I understand that it is in, subject to the production of the other paper.

The COURT. I do not qualify it in that way yet.

Mr. HENKLE. Then I misunderstood it.

The COURT. It is in now with the expectation that the other paper will be produced shortly, and if it is not produced, then the question will arise whether it has a right to be in independently, and the court will then entertain your motion to strike it out if the other paper does not come. But I can see very well some ground why this should be regarded as an independent order made by the Second Assistant Postmaster-General.

Mr. HENKLE. I except to the admission of the paper now, your honor.

Mr. WILSON. If your honor please, in order that we may not lose any rights which we may have in this case, we ask that the petitions that are referred to on the jacket which has been read in evidence and which were the foundation of the order which was made, may be read to the jury.

The COURT. I think that falls within the ruling of yesterday.

Mr. WILSON. I know it does, but I simply want to save our rights.

The COURT. Very well. Your rights will all be preserved. Those petitions will come in at the proper time.

Mr. WILSON. It will save a great deal of trouble and a good deal of time if they will have them read at once. I will undertake the trouble of reading them.

The COURT. It is not a matter of substantial importance, really, but I did not want to have both sides put in at the same time, because in the event that the demurrer to the evidence should be made it would throw upon the court the duty of weighing it on both sides, which I did not want to attempt.

Mr. WILSON. I am not going to argue it, but even with the suggestion made by the court, the court will see at once that they are putting in a part of the files of the case. In other words, they are reading an order that upon its face is based upon other papers referred to in the document they read, that being an essential part of the whole thing. In the light of the suggestion, or in the direction of the suggestion made by the court you can see how important it is to us that the Government shall put in that which strictly pertains to the evidence which they introduce, so that if we be called upon to make a motion, we will have the case as it is before the court. Now, it seems to me that we are entitled to have this read, according to the strict rules of evidence.

Mr. TOTTEN. The court, as I understand it, has conceded not only to-day, but yesterday, that where a paper is mentioned, for instance in one of these indorsements, we have a right to have it read as part of that order. Now, in many, if not in all of these indorsements upon the backs of these jackets the petitions are described or referred to. They are sometimes described very fully, and at other times they are simply referred to, and they form a part of the document which is submitted to the consideration of the jury now. So that even upon the decision of your honor yesterday we cannot take one paper piecemeal and read a part of it to the jury and leave the rest of it until some other day. Your honor has just ruled, under the objection made by brother Henkle, that where a reference is made to a document as forming part of an order that it should be read. Now, that is all we ask. It is all one paper. It forms a part of it.

The COURT. There is a good deal of - since the ruling of yesterday I have considered whether that ruling ought to apply to cases with reference to the foundation for it, and if the opinion in that respect I think that to-day we will move the papers which were the foundation of the independent papers, not contained in the jacket, as when the court made the ruling, it made the rulings which were not in the jacket at all, and no order.

Mr. BLISS. This is a matter we have no preference will be necessary to stop the trial then, because papers to the files, and I must go back and get

Mr. WILSON. Haven't you those papers here

Mr. BLISS. No, sir; it will probably take me an hour to get them again.

The COURT. You can go on, and read the papers

Mr. WILSON. Send over and get the petition.

Mr. BLISS. I cannot send for them, I will have

Mr. WILSON. Bring them in after recess.

Mr. BLISS. I will get them as soon as I can have my regular time for refreshment without going to get papers. I have acted in entire obedience

Mr. WILSON. If you will write a note around them.

Mr. MERRICK. We won't do it.

Mr. WILSON. Well, authorize me to write it for

Mr. MERRICK. No, sir.

[A call was made for Mr. S. W. De Busk, but

Mr. BLISS. I will improve the time by putting before the tabular statement of payment upon route to Madison, showing the aggregate quarterly less fines and deductions of \$668.30, making \$9,572.36. But of the deductions \$26.25 were added to the sum of \$9,572.36 to show the aggregate

Mr. HENKLE. Does that show to whom the warrants issued?

Mr. MERRICK. We will offer the warrants show to whom payments were made.

The tabular statement just offered is as follows

Statements and recapitulation of payments made to Dorsey, tractors and assignees on nineteen routes between

Routes.	Terminal.		State.	Pay accrued.	Fines and deductions.
	From—	To—			
38140	Trinidad	Madison	Colorado	\$10,214 41	

Route No.	Terminal.		Auditor's report.		Period for which paid.	Pay per quarter.	Less fines and deductions.	Amount of pay made.	Warrant or draft.		To whom paid.		
	From—	To—	State.	No.					Date.	No.			Date.
38140	Trinidad.	Madison.	Colorado.	27576	Nov. 7, 1878	3 qr., 1878	\$84 50	.....	\$84 50	W. 4923	Nov. 12, 1878	H. M. Vaile.	Assigned.
				2107	Jan. 23, 1879	4 qr., 1878	170 88	.....	170 88	W. 14085	Jan. 23, 1879	H. M. Vaile	Assigned.
				15371	May 4, 1879	1 qr., 1879	137 69	.....	137 69	W. 4454	May 10, 1879	H. M. Vaile	Assigned.
				20408	July 24, 1879	2 qr., 1879	624 08	.....	624 08	W. 6394	July 25, 1879	S. W. Dorsey, Middleton & Co.	Assigned.
				25305	Oct. 25, 1879	3 qr., 1879	1, 072 57	\$37 40	1, 045 17	W. 9306	Oct. 27, 1879	S. W. Dorsey, Middleton & Co.	Assigned.
				8096	Feb. 28, 1880	4 qr., 1879	1, 072 57	* 38 03	1, 034 55	W. 9267	Mar. 1, 1880	S. W. Dorsey, J. W. Boaler.	Assigned.
				16351	May 18, 1880	1 qr., 1880	1, 072 57	* 38 05	834 52	W. 5174	May 16, 1880	S. W. Dorsey, J. W. Boaler.	Assigned.
				11071	Apr. 11, 1881	1 qr., 1881	.....	.....	* 26 25	W. 151	Apr. 12, 1881	John R. Miner	Contractor.
				25944	Aug. 10, 1880	2 qr., 1880	1, 072 57	16 16	1, 056 41	W. 9405	Aug. 18, 1880	J. W. Boaler	Assigned.
				30301	Oct. 24, 1880	3 qr., 1880	1, 072 57	12 90	1, 060 67	W. 11238	Oct. 26, 1880	J. W. Boaler	Assigned.
				6835	Feb. 7, 1881	4 qr., 1880	1, 072 57	929 39	843 18	D. 4506	Feb. 7, 1881	J. W. Boaler	Assigned.
				13063	Apr. 22, 1881	1 qr., 1881	1, 072 57	254 46	818 11	D. 4384	Apr. 23, 1881	J. W. Boaler	Assigned.
				23833	July 28, 1881	2 qr., 1881	1, 072 57	.....	1, 072 57	W. 1344	Aug. 1, 1881	J. W. Boaler	Assigned.
				34873	Nov. 11, 1881	3 qr., 1881	626 10	6 60	620 50	W. 13367	Dec. 2, 1881	J. W. Boaler.	Assigned.
				Not settled.			Pay suspended.						
							10, 214 41	608 30	9, 572 36				
									668 30	Deduction.			
									10, 240 66				
									26 25	Remission.			
									10, 214 41				

* Remission of \$6.00 4 qr., '78, do'd. & \$19.00 of 1 qr., 1880

WILLIAM C. BURGNER sworn and examined

By Mr. BLISS :

Question. Where do you reside ?—Answer.

Q. How long have you lived there ?—A. A

Q. Have you had anything to do with ca
38140, from Trinidad to Madison ?—A. Yes, s

Q. What have you had to do with it ?—A.
De Busk about four months and a half.

Q. When did you commence ?—A. April 1,

Q. Down to what time ?—A. To August 15

Q. How many trips a week ?—A. Three.

Q. What was the schedule time ?—A. Two

Q. You performed the service ?—A. Yes, s

Q. How many horses did you use ?—A. I o

Q. Did you have any extras ?—A. Yes, sir

Q. How many ?—About three extras.

Q. You would use one horse one day ?—A.

Q. Three horses in one day, in going over t

Q. Then in coming back ?—A. I used the
way.

Q. But you kept three horses extra to supp
sir; just kept three horses on the road an
then.

Q. Did you have any drivers, or did you d
myself.

Q. How was the mail carried ; on horsebac
—A. On a sulky.

Q. One horse ?—A. Yes, sir ; one horse.

Q. What is the distance from Trinidad to
called sixty-eight miles.

Q. Is that correct ?—A. It is about that, I

Q. What post-offices were there on that line
San José—Grinnell, now.

Q. Grinnell used to be called San José ?—

Q. And then Madison ?—A. And then Ma

Q. Has Raton any other name ?—A. Yes, s

Q. What is it ?—A. Alfalfa.

Q. What is the distance from Trinidad to l
miles.

Q. And from Raton to Barela ?—A. Ten m

Q. Then to Grinnell ?—A. About twelve m

Q. And to Madison ?—A. About twenty-
guess.

Q. [Submitting sketch map to witness.] Pl
see if it is correct, and if it is not correct ind
[After examining the same.] Yes, sir ; that is

Q. Is there any road direct from Barela t
by Raton ?—A. Yes, sir.

Q. Do you know that distance ?—A. Fift

Q. What was your time of leaving Trinidad

Q. In the morning ?—A. Yes, sir.

Q. What was the time of arriving ?—A. Si

Q. You left Trinidad on alternate days, di

Q. And Madison every other day ?—A. Ye

Q. After carrying it for Mr. De Busk down
you after that have any connection with the :

Q. What was that?—A. I took a contract from Mr. De Busk.

Q. When did you take it?—A. It was the 1st of October, 1880.

Q. And have you been carrying it since?—A. Yes, sir.

Q. Are you still carrying it?—A. No, sir.

Q. When did you give it up?—A. I threw it up about the last of October, 1881—the 1st day of November, 1881.

Q. At that time, what time did you run on?—A. Three times.

Q. What schedule time?—A. Twelve hours.

Q. Was there any difference in your mode of performing the service?

A. No, sir.

Q. Down to October, 1880, how many horses did you use?—A. That is when I took it, the 1st of October, 1880.

Q. How many horses did you use?—A. I used two horses the first month I carried the mail.

Q. The first month you carried this mail under the contract with De Busk?—A. Yes, sir.

Mr. WILSON. If your honor please, it may have escaped my notice; but I do not remember of any affidavit having been put in evidence as to how many men and horses it took.

Mr. BLISS. I have not read the affidavit; I am going to read it.

Mr. MERRICK. Can we not put it in in our own order?

The COURT. Oh, yes.

Mr. MERRICK. I should think we might be allowed to do that.

By Mr. BLISS:

Q. [Resuming.] You used two horses, you say?—A. Yes, sir.

Q. How did you drive them?—A. I drove them to a buggy.

Q. One horse, or two horse buggy?—A. One horse, single buggy.

Q. How far did you drive them?—A. I drove one thirty miles, and drove the other about thirty-eight.

Q. The thirty miles took you to Barela, then?—A. Yes, sir.

Q. And the other carried you through?—A. Yes, sir.

Q. When you returned in that way, what did you do at that time?—A. After that I put on three horses.

Q. How long did you continue driving with three horses?—A. I do not remember, now.

Q. Did you, at some time in the winter, put on more horses?—A. Yes, sir; I put on four horses in the winter.

Q. How long did you continue the four horses?—A. Up until the time I quit carrying the mail, I believe.

Q. Before you left off carrying the mail, was Alfalfa discontinued?—A. Yes, sir.

Q. To perform service on that route once a week, in nineteen and three-fourth hours, going by Raton, how many men and horses were necessary?—A. One man, and two horses.

Q. To perform it three times a week on a schedule of nineteen and three-fourth hours, how many would it require?—A. About four horses.

Q. How many men?—A. I think one man ought to carry it on that schedule.

Q. To do it three times a week on a schedule of three (?) hours, how many men and horses would it require?—A. About six horses, I think, would be sufficient.

Q. How many men?—Two men in the winter would be required, I think.

Q. One in the summer and two in the winter ?—A. One in the summer would sufficient to perform the service.

Q. What was the amount of mail that you carried ?—A. It would average about twenty pounds, I guess.

Q. From which end was the most mail ?—A. From Trinidad.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. When did you come here ?—A. The 12th of May.

Q. You have been here ever since ?—A. Yes, sir.

Q. Were you here before that time ?—A. Yes, sir ; last February.

Q. How long were you here then ?—A. Ten or twelve days. I do not remember exactly.

Q. You have been carrying this mail, if I understand you, since the 1st of April, 1880 ?—A. Yes, sir.

Q. And continued until August, 1880 ?—A. Yes, sir. I continued carrying it for Mr. De Busk until August 15, 1880.

Q. Was Mr. De Busk a subcontractor, do you know ?—A. Yes, sir.

Q. From whom did he get his subcontract ?—A. Mr. Duncan.

Q. Who is Mr. Duncan ?—A. That is all I can tell you. He lives there about Trinidad, or did at that time.

Q. Do you know from whom Mr. Duncan got his subcontract ?—A. I suppose he got it from Mr. Dorsey ; I do not know.

Q. When you began carrying that mail, how many trips did you make ?—A. Three.

Q. And on what schedule ?—A. Twelve hours.

Q. Going by way of Raton ?—A. Yes, sir.

Q. How long had you lived there before you began carrying the mail ?—A. About a year in that part of the country ; not exactly at Trinidad.

Q. Do you know how the mail was carried before they went around by Raton ?—A. No, sir ; I don't know anything about it. I do not know anything about this route only since April, 1880.

Q. Then you do not know that originally the route ran from Trinidad across to Barela, and so on down ?—A. I don't know anything about it at that time.

Q. You say that from Trinidad to Barela was about fifteen miles ?—A. Yes, sir.

Q. Then, when they put Raton on, it was about twenty miles to Raton, and then about ten or eleven back to Barela ?—A. Yes, sir.

Q. That increased the length of the route about fifteen miles ?—A. Yes, sir.

Q. Now, when you began carrying three trips per week, going by way of Raton, and that making the distance about sixty-five miles—

The WITNESS. [Interposing.] Sixty-eight miles.

Q. [Continuing.] About sixty-eight miles, how many horses did you say you used ?—A. The first month I only used two horses.

Q. That was the month of August, 1880 ?—A. It was in September that I did this. I took the contract from Mr. De Busk the 1st of September, but it was not turned over to me until October 1.

Q. Hold on. I am going back to the time when you were carrying it for Mr. De Busk. You began that in April ?—A. Yes, sir.

Q. And that you say was three trips ?—A. Yes, sir.

Q. Now, how many horses did you say you used to make three trips a week from Trinidad to Madison by way of Raton and Barela, a

istance of sixty-eight miles?—A. I used three horses, and then had three horses to change with when I wanted to.

Q. Making in all six?—A. Yes, sir.

Q. What kind of a country is that through there?—A. From Trinidad down to Raton it is a right nice country.

Q. From Raton to Barela?—A. It is a pretty dry country across here. It is not settled.

Q. Do you mean it is a desert?—A. Yes, sir; no person lives there.

Q. Is it mountains, or is it level?—A. It is level.

Q. What kind of a country is it from Barela to Grinnell?—A. Part of the way it is a broken country.

Q. Is there anybody living in there?—A. Yes, sir; where there is a water-course people live.

Q. Now from Grinnell to Madison, what kind of a country is that?

The WITNESS. From Madison to Grinnell?

Mr. WILSON. Yes, either way. I do not care which way you put it.

A. It is a broken country. You strike the mountains there.

Q. [Submitting sketch map to witness.] You will notice this route takes a detour, a curve here. [Indicating.] Is that to enable you to get round the mountains?—A. I do not understand you.

Q. [Indicating on sketch-map.] Here, from Grinnell, you say, it runs round this way, and comes in here to get to Madison?—A. I guess that is a mountainous country there.

Q. I presume it is.—A. I never traveled that way. That is the main road.

Q. How did you get there?—A. I went through another gap in the mountains.

Q. You had to go through these mountain passes?—A. Yes, sir; had to go through the mountains.

Q. How did you get forage in there for your horses?—A. I got forage from San Cedro. My brother-in-law had a ranch there, and I got hay from there, and from Madison I got hay and grain from the postmaster.

Q. Did you haul forage in there for the purpose of supplying your stock?—A. Only about five miles.

Q. You had to employ somebody to do that, did you?—A. Yes, sir.

Q. It required additional horses?—A. No, it did not require any additional horses. I could take those that were resting.

Q. Where does this brother-in-law of yours live?—A. About five miles from there.

Q. From where?—A. On the San Cedro. That is between Barela and San José or Grinnell.

Q. It would require men and horses to get the forage there for the horses that were carrying this mail?—A. You could hire a man, for that matter, to go and haul a load who kept horses for that purpose.

Q. Now, that was the way you got along in the summer time. In the winter time did it take any more men and horses?—A. Yes, sir; used another man besides myself part of the time in the winter.

Q. And did you take any more horses in the winter?—A. I used just our horses all the time; I had no extras.

Q. You gave up that contract, did you not?—A. Yes, sir.

Q. And your stock was so poor and worn out that you could not run any longer?—A. Yes, sir; my stock was worn out. I could have run it longer, but Mr. Rerdell notified me that Raton was left off, and he cut my pay down so low that I could not carry it for that money.

My horses were run down, but I could have r pay hadn't been cut down.

Q. In other words, the service that you had route had worn out your horses?—A. Yes, them.

Q. If you had properly equipped that route worked your horses, you would have had to more horses than you had?—A. I ought to ha

Q. You ought to have had more than that? ought to carry it. I would not want to feed that pay, and I think that is sufficient to carr

Q. The difficulty was that you were getting the trouble, was it?—A. That was the difficul

Q. Did you not get fined for not getting t time?—A. Yes, sir; I was fined pretty heavy

Q. Because you did not carry the mail?—A sible to carry it promptly in winter time. It the sixty-eight miles.

Q. With the stock you had?—A. With any

Q. Oh, no; now.

Mr. MERRICK. Don't argue with the witnes

A. I have made the remark that it did not many horses a man had; he could not get ov

Q. Why was it impossible?—A. The sno horses could not get through it.

Q. You say it was a pretty level road from —A. Yes, sir; a little broken, of course.

Q. Then from Raton down to Barela was a sir.

Q. And how was that road from Barela to C way it was broken, heavy, and part of it was it was good road.

Q. From Grinnell to Madison was through A. Yes, sir.

Q. Now, you say it did not matter how ma could not carry that mail through that sixty- Sixty-eight miles in twelve hours.

Q. He couldn't do it?—A. I don't think h times going up to his breast in the snow.

By the COURT:

Q. Another horse could not help him out of Mr. WILSON. Why, your honor, they break That is what they have this other stock for.

The COURT. I wanted to call his attention could help another horse out of the snow.

Q. [Resuming.] If you had had horses en could have kept the trails broken so that th through, could you not?—A. I don't know t drove of horses over the route may be I could

Q. Have you been accustomed to that req and the mode of keeping the roads open? way.

Q. You do not know anything about that v sir.

Q. Now, we will go back a little. You to

while ago that to carry that mail one trip a week and go through in nineteen hours one man and two horses was enough, did you not?—A. Yes, sir.

Q. You stick to that?—A. Yes, sir; on a schedule of nineteen hours.

Q. Summer and winter?—A. Did I say one man in winter. Didn't I say two men?

Q. I am not saying what you said?—A. I said two men and four horses.

Q. On a schedule of nineteen hours one man and two horses could do that in the summer, could they?—A. Yes, sir.

Q. That is sixty-eight miles in the summer season?—A. Yes, sir.

Q. That is to say you traveled a horse thirty-four miles; or would you travel him all the way through?—A. I would travel him half the way through.

Q. Then you would take another horse and drive him the balance of the way and go that in nineteen hours and then turn about and repeat that drive?—A. Yes, sir.

Q. Suppose you had had stations ten miles apart on this route and two horses to each station; do you think you could have got through in twelve hours?—A. I doubt it.

Q. Do you not think you could when you come to reflect about it?—A. I can't say whether I could or not. I don't think I could.

Q. Suppose you had three horses then to each station.—A. Two horses are just as good as three. If I had had two horses at a station I could put two to a rig if I wanted to make good time.

Q. Suppose you had put two to a rig and started out from Trinidad, and had a station ten miles out; could you have driven that in an hour with two good horses?—A. You don't have to go very far to weary horses when you get into deep snow.

Q. Leave the snow out at present; could you have driven that in one hour?—A. No, sir; I never drive that fast.

Q. Could you have driven it in an hour and a half?—A. I guess so.

Q. Could you have driven the next ten miles with a fresh pair of horses in an hour and a half going from Trinidad on towards Madison way of Raton?—A. I guess a man could with good horses.

Q. Now, if you had had a station ten miles further on towards Barela could you have driven that with a pair of fresh horses in an hour and a half?—A. I guess I could.

Q. Then from Barela on to the next station, ten miles, if you had a pair of fresh horses, could you have driven that in an hour and a half?—A. I guess so.

Q. That would bring us up to Grinnell, or San José?

The COURT. It is twelve miles from Barela to Grinnell.

Q. We will stop there. You could have gone that in the time I have stated if you had good stock and enough of it?—A. When the roads were good I will say.

Q. Could you not have driven it in winter in that length of time?—A. No, sir.

Q. How long would it have taken you to have driven it each of those ten miles?—A. If a man drives four miles an hour when the roads are bad he is doing very well.

Q. That is two and a half hours for ten miles?—A. He could not make four miles an hour when the roads are right bad.

Q. But the fact of the matter is, after all, that with the stock that you had there, you could not and did not make the time, and in consequence of that your stock was worn out and you threw up the con-

tract?—A. I threw it up because my pay was cut down more than in proportion to the distance.

Q. When did they cut off Raton?—A. It was in August; about the first of August or the seventh.

Q. What year?—A. Eighteen hundred and eighty-one.

Q. What kind of a place is Raton?—A. It is a settlement up and down the river there.

Q. Is there a school there?—A. Yes, sir; there is a school-house there.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. You said that they cut down your pay more than the difference of the distance. How much did they cut your pay down?—A. They cut it down from \$1,550 to \$1,035.

Q. When Raton was taken off?—A. Yes, sir.

Q. Raton made a difference in the distance of fifteen miles, as I understand you?—A. Yes, sir.

Q. You spoke of being fined for failures to get through. In what time of the year were you fined?—A. I do not remember exactly.

Q. In winter?—A. Yes, sir; it was in the winter; there were two quarters in the winter that I was fined.

By Mr. WILSON:

Q. Where did you get your horses shod?—A. I get them shod at each end of the route.

Q. If anything happened to them between the two places, where did you get them shod?—A. Nothing ever happened of that sort. A horse might go barefooted a day or two if we couldn't get him shod.

Q. They did go barefooted, didn't they?—A. Sometimes some of the horses would.

Q. How about your horses?—A. I kept them shod.

Q. You kept them well shod?—A. Yes, sir.

Q. Who took care of your horses?—A. I hired men that lived along the way.

Q. How many men did you have who lived along the way?—A. I had two hostlers along the way part of the time. I had two stands—rather the people where I had these stands lived there, and they took care of my horses.

Q. And you paid them for it?—A. Yes, sir.

By the COURT:

Q. Did those people furnish the feed for your horses, or did you buy your own feed?—A. I furnished everything myself.

By Mr. MERRICK:

Q. What did you pay those men?—A. I paid them money.

Q. I mean how much?

The WITNESS. For tending to the horses?

Mr. MERRICK. Yes.

A. I got them attended to for \$4 a month, and furnished my own feed.

By Mr. BLISS:

Q. [Submitting a paper.] I hand you a paper dated Washington February 8, 1881, and ask you if you received it?—A. Yes, sir.

Q. Did you receive any inclosure in the letter?—A. Yes, sir.

Q. What was it?—A. It was a draft.

Q. A draft for your money?—A. Yes, sir; \$158.

Q. [Submitting another paper.] I show you a paper dated July 30, 1881, and ask you if you received it?—A. Yes, sir.

Q. Was anything inclosed in it?—A. Yes, sir.

Q. What?—A. A draft for \$387.50.

Mr. HENKLE. Are you offering these papers?

Mr. BLISS. I mean to do so when I get the chance?

Mr. HENKLE. I object to them.

Mr. BLISS. I offer them. They are statements in which he says he received his pay, one of them showing deductions for the quarter, and reporting to be signed by J. R. Miner, contractor.

Mr. HENKLE. I object to them, because they are not proved to be signed by Mr. Miner. They do not bear his signature. The papers are of no importance in themselves, except as they tend to connect Mr. Miner with the matter. He went out of it in April, 1879, and never had anything to do with it afterward.

Mr. MERRICK. He went back into it.

Mr. HENKLE. He denies this. It is not his signature, and I object to it, although the paper is of no importance in itself.

Mr. MERRICK. Does he deny it?

Mr. HENKLE. He does.

Mr. MERRICK. Has he seen the paper?

Mr. HENKLE. He has.

Mr. MERRICK. And he denies it?

Mr. HENKLE. He does. Does your honor admit the paper?

Mr. BLISS. A draft for pay for carrying the mail was inclosed in each one of these papers.

The COURT. It is possible that somebody might have used his signature.

Mr. MERRICK. When he comes to prove that it is not his signature—

Mr. HENKLE. [Interposing.] In a criminal case the defendant does not have to prove his innocence.

Mr. MERRICK. I do not say that he does; but papers are in evidence admitted to be in his handwriting, and the jury can compare them with this, and if they do not choose to believe that he wrote it, all right.

Mr. HENKLE. What paper is admitted to be in his handwriting?

Mr. MERRICK. You can ask the court. It was stated this morning.

Mr. HENKLE. There is not a single paper in this case so far as I know.

The COURT. I am very much mistaken then.

Mr. HENKLE. I have never admitted any paper to be in his handwriting.

Mr. BLISS. As I recollect, there are various papers.

Mr. HENKLE. They have been offering papers, and I have been objecting to them because they were not proved.

Mr. BLISS. We have the contract.

Mr. HENKLE. The papers were admitted because they came from the department.

Mr. MERRICK. Here is the contract itself admitted to be in his handwriting.

Mr. HENKLE. Your honor has admitted them because they came from the department. These papers were not signed by Miner at all.

The COURT. A great many papers have been admitted because they came from the department that would not have been admitted otherwise, and that for the purpose of connecting Brady and Turner with the conspiracy. They were papers in the department upon which Brady and Turner had acted. But these seem to be papers not connected with Brady and Turner at all, and they are not given in evidence for the purpose of affecting Brady and Turner, or any officer in the department.

Mr. HENKLE. They are offered against Mr. Miner, if anybody.

The COURT. They are offered against Mr. Miner.

Mr. HENKLE. And he denies that they are his signature.

The COURT. They ought to prove them as against Miner. It is said on the part of the prosecution that there are other papers of Miner's admitted to be genuine which have been given in evidence.

Mr. HENKLE. That I deny, your honor.

The COURT. I supposed that there were.

Mr. MERRICK. I think they are all through the case. Here is one that was admitted this morning to be in his handwriting.

Mr. HENKLE. What is it.

Mr. MERRICK. The contract between him and S. W. Dorsey. Mr. Henkle rose and said that at the time that this contract was made Miner passed out of the transaction entirely.

Mr. HENKLE. Let me see it.

Mr. MERRICK. It was admitted this very morning; and I told him I would show when Miner came back into the transaction by a revocation of that contract.

The COURT. I remember that little colloquy. It was the only one I have seen any use in.

Mr. MERRICK. I am glad your honor saw use in that.

Mr. HENKLE. Your honor, I admit that this signature is the genuine signature of Mr. Miner. I am willing that the jury should take that and compare it, and if any man will say that the others were written by the same hand then I will give it up. I say that Mr. Miner went out of this matter——

Mr. MERRICK. [Interposing.] That is not in the case. We are discussing the evidence. Whether he went out or not is a matter of argument, which I shall reply to.

Mr. HENKLE. I do not object to your replying to it. Your honor will remember that a controversy sprung up awhile ago about an indorsement on a jacket. The jacket stated that the original contractor who was Mr. Miner, and the subcontractor whose contract had been introduced, Mr. Dorsey, had joined in a request for the surrender of the contract.

The COURT. I remember that.

Mr. HENKLE. Now I ask for the production of that contract, or of that paper requesting the surrender of the contract. I deny now that Mr. Miner ever signed it. I say that Mr. Miner, on the 1st of April, 1879, transferred all his interest in this contract to Mr. Dorsey, and he has never had any interest in it since, and that the papers given in evidence affecting him were either signed before 1879 or not signed by him at all.

The COURT. It might very well happen that Dorsey and Miner should join in a request that the subcontract should be redelivered, surrendered, and I can understand very well that Miner still might not be restored to his original place in the route, because somebody else might have come into the place of Dorsey; but I do not know how that is.

Mr. HENKLE. It is of very trifling importance, except that it is in-

roduced as against Mr. Miner, and there is not a vestige of evidence against him, and I do not want that there should be. I admit that this is the genuine handwriting of Miner.

The COURT. If the prosecution are willing to risk this piece of evidence upon the comparison of handwriting with the jury, I think the papers can go in. It is not a question for the court to pass upon. Where papers are already in evidence admitted to be the genuine papers of the defendants, and other papers are then offered, the court will allow those subsequent papers to go to the jury to judge.

Mr. HENKLE. I admit that that is his genuine signature and the jury can compare the other signatures with that.

Mr. MERRICK. I am sure your honor did not intend to present the alternative to us. Although the jury may compare them we are not prevented from proving the writing hereafter. We are going to introduce evidence of handwriting generally hereafter.

The COURT. For the present the papers can be admitted at the risk of the prosecution. If they fail hereafter to prove the signature to be genuine on those papers, and the jury should come to the conclusion that they are not genuine signatures, the court will instruct the jury to disregard them.

Mr. MERRICK. So far as Miner is concerned, I understand the counsel to state that these papers that Mr. Bliss has in his hand are not in Miner's handwriting, but that his name is forged to them.

The COURT. That does not follow, either.

Mr. MERRICK. I would like to understand. If the counsel says they are not in Miner's handwriting, does he mean to say that they are forgeries, or that he authorized them?

The COURT. He is not bound to answer the question.

Mr. MERRICK. If they are not his, and he did not authorize them, they are forgeries.

The COURT. No; it does not follow.

Mr. MERRICK. That is a matter of fact and not of law. He says they are not in his handwriting.

Mr. HENKLE. Yes.

Mr. MERRICK. It is a most excellent forgery. I am willing the jury should compare them.

Mr. BLISS. [Reading:]

WASHINGTON, Feb'y 8th, 1881.

Mr. WILLIAM BURGNER,
Trinidad, Colorado. (Route 38140.)

DEAR SIR: I hand you below statement of your account for quarter ending Dec. 31, 1880.

Pay per annum, \$1,550.

Pay per quarter, \$387.50.

Deductions, 229.39.

Balance due you, for which draft is enclosed, \$387.50.

Yours, truly,

J. R. MINER, Contractor.

[The paper last read was marked by the clerk 12 K.]

The COURT. Let me see the paper, and let me see the other genuine paper. I would like to look at them.

The papers were submitted to the court.

Mr. BLISS. [Reading:]

WASHINGTON, July 30, 1881.

Mr. WILLIAM BURGNER,
Trinidad, Col. (Route 38140.)

DEAR SIR: I hand you below statement of your account for quarter ending June 30, 1881.

Pay per annum, \$1,550.

Pay per quarter, \$387.50.

Balance due you, for which draft is enclosed, \$387.50.

Yours, truly,

J. R. MINER, *Contractor.*

[The paper last read was marked by the clerk 13 K, and submitted to the court.]

The COURT. [Having examined the papers.] I have an opinion about it, but I will keep it myself.

Q. I hand you a letter dated Washington, D. C., April 30, 1881, and ask you if you received it? [Submitting a letter.]—A. Yes, sir.

Q. At or about its date?—A. [After again examining the letter.] I don't think I received that. I think Mr. De Busk received that.

Mr. BLISS. I have handed you the wrong letter. [Submitting another.] This is the one, dated August 1, 1881.

Mr. WILSON. This is a renewal of the examination-in-chief I suppose, your honor.

Mr. BLISS. The fact is I accidentally came away without these letters, and had to send for them.

Mr. WILSON. It is all right. I am only reserving my right to cross-examine the witness when he gets through.

Mr. MERRICK. Certainly you shall have that right.

The WITNESS. Yes, sir; I received that letter.

[The letter was submitted to Mr. Wilson.]

Q. When you were carrying the mail, from whom did you receive your directions?—A. From Mr. Rerdell.

Mr. WILSON. This letter is dated the 1st of August, 1881, your honor.

The COURT. Its competency depends upon its matter, I suppose.

Mr. WILSON. It cannot possibly have any bearing, it seems to me, upon General Brady and Mr. Turner. It has relation to matters that occurred in the Post-Office Department, changes which have been made in the service, as I understand, after Mr. Brady went out of office, and after the new administration came in.

The COURT. Let me see the paper. [The paper was submitted to the court.]

Mr. BLISS. They referred, on cross-examination, to the fact of his having given up his contract in consequence of a notice which he received of the taking off of Alfalfa from the route and the reduction of his pay. He has said that while he was carrying the mail he did his business with Mr. Rerdell, and this letter purports to be signed by Rerdell.

Mr. WILSON. They asked him, on his examination-in-chief, how long he continued to carry, and traced it up until quite recently.

Mr. MERRICK. And Mr. Wilson remarked that the new administration had broken him up.

Mr. WILSON. They took him down to October, 1881.

The COURT. I cannot see the importance or the relevancy of this paper.

Mr. BLISS. I do not seek to encumber the record with papers that your honor does not think relevant. [To the witness.] That is all.

Mr. WILSON. That is all.

Mr. BLISS. I assume that your honor rules out this letter on account of its date. There are later letters here which I do not offer because I presume they will come under the same ruling. I now read one of the papers which Mr. Wilson was so anxious for :

WASHINGTON, April 28, 1879.

MR. T. J. BRADY,
Second Assistant Postmaster-General :

SIR: I have the honor to submit my proposition to carry the mails upon a faster schedule from Trinidad to Madison. The roads over this route, like most mountain roads are very rough and the mails heavy. There is a very heavy mail passing over this route, and I believe it ought to be made daily.

Yours, truly,

JOHN W. DORSEY.

[The paper last read was marked by the clerk 14 K.]
It is annexed to a paper filed on the 30th of April, 1879.

MR. THOMAS J. BRADY,
Second Assistant Postmaster-General :

SIR: The number of men and animals necessary to carry the mail on route 38140, on the present schedule and three trips a week, is one man and four animals: the number necessary on a schedule of twelve hours and three times a week, is three men and seven animals.

Respectfully,

JOHN W. DORSEY,
Subcontractor.

CITY OF WASHINGTON,
County of Washington :

John W. Dorsey, being duly sworn, deposes and says, that the above statement is true as he verily believes.

Sworn to and subscribed before me this 26th day of April, 1879.

W. F. KELLOGG,
Notary Public.

The paper is indorsed on the back as follows :

April 30, 1879. 38140, Colo. Sworn statement of J. W. Dorsey.

[The paper last read was marked by the clerk 15 K.]

Your honor will see that this is an oath made by Dorsey, as subcontractor, and there is no record anywhere, except there, that he had anything to do with the route.

Mr. MERRICK. The record shows that Miner was the contractor and J. W. Dorsey was the subcontractor.

[The paper was submitted to the jury for examination.]

S. W. DE BUSK was sworn, after which (at 12 o'clock and 25 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. DE BUSK was examined as follows :

By Mr. BLISS :

Question. Where do you reside ?—Answer. At Las Animas County, Colorado.

Q. What place in Las Animas County ?—A. Alfalfa, formerly Raton.

Q. How long have you lived there ?—A. I have lived in that county about ten years.

Q. How long have you lived at Raton ?—A. About seven years ; seven or eight.

Q. Were you ever postmaster at Raton ?—A. I was.

Q. How long, and when?—A. For about a year after the office was established; I was the first postmaster.

Q. When was it established?—A. My commission bore date January 31, 1878.

Q. [Submitting map.] Please look at this sketch map and see if it is a correct representation of that region along mail route 38140.—A. It is not correct in every particular; but it gives a very good idea of the lay of the country.

Q. In what respect is it incorrect?—A. I see a slight inaccuracy in the location of Barela.

Q. In what respect?—A. Barela is on the opposite side of that stream from where it is placed.

Q. But it is substantially correct?—A. It is.

Q. When was the service first supplied to Raton on this line?—A. The 17th of January, 1879.

Q. How many trips a week?—A. One trip a week was put on at that time.

Q. How long did that continue?—A. It continued until May 4, 1879.

Q. Then what after that?—A. Then we had three trips per week.

Q. How far is Raton from Linwood?—A. It is either four-and-a-half or six miles, according to the road you travel. According to the road that the mail would have to travel it is six miles.

Q. How far is it from Pulaski?—A. We call it eleven miles.

Q. Is Pulaski on a railroad?—A. Pulaski is half a mile from Hoehne's Station.

Q. On what railroad?—A. The Atchison, Topeka and Santa Fé Railroad.

Q. What river is it that is indicated here that Raton is on?—A. That is the Las Animas River. On my maps it is designated as the Purgatoire.

Q. That runs by Pulaski, does it?—A. Yes, sir.

Q. And then by Raton?—A. Yes, sir.

Q. Please look at this letter (2 K), and state if you wrote it.—A. I wrote this letter.

Q. At or about its date?—A. On that date.

Q. What did you do with it?—A. I presume I sent it to the Postmaster-General. It is addressed to him.

Q. You intended to, I suppose?—A. I did send it to him.

Q. Are the statements in that letter correct?—A. They are substantially correct. I wrote from memory without referring to particular dates, and there may be unimportant inaccuracies in it. It is substantially correct.

Q. Do you know how Mr. Teller's indorsement came on there? Did you get it, or how?—A. No, sir; I did not get that indorsement.

Q. Do you know how it came there?—A. I remember having written a number of communications to the Post-Office Department with a view of getting service at that office. Near the latter part of the year I happened to meet Mr. Teller in Trinidad, and was introduced to him, and he asked me to write a statement of the case and send it to him, and then he would indorse it and forward it to Washington, and if the service was not put on within a month afterwards, to write him again. I don't remember whether that is the letter that I sent to Mr. Teller to be sent by him to the Post-Office Department or not.

Q. This letter is already in evidence. It says:

The object of this communication is to petition for mail service twice a week, if not

from any central point to Raton, at least from Pulaski post-office, on the A., T. & S. F. R. R., to Rator, a distance of 12 miles.

A. I should suppose that was the letter I sent to Mr. Teller.

The COURT. It is addressed to the Postmaster-General.

Mr. BLISS. The Second Assistant, I think.

Mr. WILSON. It is addressed to the Postmaster-General.

Mr. BLISS. It comes from the files. It is a letter I produced from the files.

Q. Raton and Trinidad, then, are in the same valley?—A. Yes, sir; on the same stream.

Q. What was your compensation as postmaster?

Mr. WILSON. What is the importance of that, your honor?

The COURT. I do not see it.

Mr. BLISS. Well, sir, there is a provision of law regulating the amount to be paid for a new route, or an addition to a route, gauging it by the amount of the compensation of the postmaster, and limiting it to not exceeding two-thirds of that amount. Raton was added by the order of Mr. Brady, and the question of compensation that could be allowed for carrying the mail there as we claim comes under the section of the Revised Statutes relating to the subject.

Mr. KER. Section 3971 of the Revised Statutes.

Mr. WILSON. Your honor, I will read the section:

The Postmaster-General may enter into contracts for extending the line of posts to supply mail to post-offices not on any established route, and, as a compensation for carrying the mail under such contracts, may allow not exceeding two-thirds of the salary paid to the postmaster at such special offices.

Now, when I have read that, you will see how much of application this thing has to the case. This is where there is a special office created and the Postmaster-General is allowed to supply that special office not on any route and it limits the compensation; whereas in this case, Raton was made an office on this route. It has about as much to do with it as the court. If I can get anything further off from it I will mention it,

Mr. BLISS. Raton was not on any established route; a petition was presented asking that it be made to communicate with Pulaski upon the railroad, with not exceeding twelve miles of communication there, giving direct communication in that way, and as we expect to show at very much less expense than was incurred here. Instead of going direct to Barea and Trinidad, this route is wrenched from its proper direction, so as to make according to the order twenty-two additional miles of travel, and there is allowed for it twenty-two miles. We say that whatever authority the Second Assistant Postmaster-General may have to change a route, he has no right to wrench a route in this way, to evade entirely that provision of the law and to allow, as he did in this case, to these contractors an amount which, after expedition, came to over \$2,000 a year. Your honor will bear in mind that the route, after expedition, was only run in the same time as it was before expedition, and before it was wrenched from its natural course and Raton put on. We claim, and at the proper time propose to argue, that the proceeding was one in violation of the statute.

Special offices are offices under the regulations not located on a regular mail route, supplied by a special carrier, whose compensation is fixed at two-thirds of the salary of the postmaster.

That is what the regulation says in defining special post-offices. That is all I care to say upon the subject. We submit that the evidence

is admissible, as bearing upon that question of law which we desire to raise.

The COURT. Let me inquire, was the post-office at Raton established before the expedition was ordered?

Mr. BLISS. Yes, sir; established on this route before the expedition was ordered. The post-office at Raton was placed upon this route on the 6th of June, 1878, to commence the 1st of July, 1878, but was then put there without change of distance or pay. Subsequent to that time the order was modified by a recital that it increased the distance twenty-three miles, and then there was allowed to the contractor additional pay primarily of \$172.75, and expedition came on the 9th of May, 1879.

The COURT. Does that fall within the provisions of this act?

Mr. BLISS. Why not?

The COURT. It was an established post-office.

Mr. WILSON. That is the very point.

Mr. BLISS. From the very outset there was a certain sum allowed for carrying that mail. Leaving expedition and everything else out there could not be, we say, more money allowed than two-thirds of the salary paid to the postmaster. I do not know what this gentleman's salary was.

The COURT. That is, for a mail from Pulaski—

Mr. BLISS. [Interposing.] Not from Pulaski. We say that after putting Raton on that route there could not be allowed for including Raton on the route more than two-thirds of the then existing compensation of the postmaster.

The COURT. Of the postmaster at Raton?

Mr. BLISS. Of course.

Paid to the postmaster at such special office,
the act says.

The COURT. What is meant by special office?

Mr. BLISS. [Reading:]

The Postmaster-General may enter into contract for extending the line of posts to supply mails to post-offices not on any established route.

That is the way it describes them.

And as a compensation for carrying the mail under such contracts may allow not exceeding two-thirds of the salary paid to the postmaster at such special offices.

A special office, therefore, seems to be a post-office not on any established route. If this order had said "Put Raton on to this route and pay \$172," it could not be done. It cannot be done by indirection, and then having been done by indirection you cannot go on and perpetuate and multiply that result under the provision for expedition so as to make the order (originally as we claim exceeding the authority) cost the Government over \$2,000 a year.

Mr. WILSON. Now, if your honor please, let us go back and understand this thing. When this route was advertised it did not embrace Raton.

The COURT. Then Raton was not on an established route.

Mr. WILSON. It was not then on an established route.

The COURT. That advertisement was issued in 1878.

Mr. BLISS. Eighteen hundred and seventy-seven.

Mr. WILSON. Eighteen hundred and seventy-seven, but the contract began the 1st of July, 1878. The letting was in the fall of 1877, and Raton was not on this route.

The COURT. Instead of going by Raton the route ran from Trinidad across to Barela.

Mr. WILSON. Exactly

The COURT. Was that the advertised route?

Mr. WILSON. That was the advertised route; but then the Postmaster-General, under the authority that he had, or you may say the Second Assistant Postmaster-General, embraced Raton on this route, and that was done on the 6th day of June, 1878, by order No. 4215. Your honor will recollect that I called Colonel Bliss's attention to the fact that he had not given the number of this order. I am now going to read it. This was done upon petitions that were presented for the purpose of having Raton made a post-office and put on this route:

Embrace Raton next after Trinidad from July 1st, 1878, without change of distance or pay.

BRADY.

The COURT. Without change of distance?

Mr. WILSON. Without change of distance or pay, although it added twenty-three miles to the distance,

The COURT. That was made in the first place without any change in distance.

Mr. WILSON. Yes. Of course it could not be done; yet that is the way the order was made.

The COURT. Nothing could be cheaper than that.

Mr. WILSON. Nothing could be cheaper than that. Let us see what follows:

1st. Raton was embraced on this route from July 1, 1878, without change of distance or pay. It now appears from D. C.

That is distance schedule——

The COURT. "D. C." That is a singular way to spell schedule.

Mr. BLISS. Distance circular.

Mr. WILSON. Distance circular, of course:

That the distance was actually increased 23 miles. Contractor now asks pro rata pay for the increased distance. See D. C.

Now comes the order:

Modify order of June 6th, 1878, No. 4215, so as to increase distance 23 miles, and contractor's pay \$172.75 per annum, being pro rata.

FRENCH.

Not Brady, but French.

The COURT. What authority had French to do such a thing as that?

Mr. WILSON. Simply this authority: They embraced this post-office on this route, and made it a post-office on a regular route.

The COURT. Without increase of distance?

Mr. WILSON. That was Brady's order. Now, then, when they make these orders they do not know what the distance is. They have to send out their distance circulars to the postmaster. They get those distance circulars back again, and then they regulate the pay. Until they get the distances they cannot tell how much to put on. Therefore, the first order is made without change of distance or pay. He simply puts Raton on that route, and the contractor goes on. Then they send out their distance circulars in order to ascertain what the distance is that the contractor is to be paid for. When the distance circular comes back, it appears that twenty-three miles has been added to the distance the contractor has to go. So Mr. French makes the

order to modify order No. 4215, which was without increase of distance or pay, so as to give the contractor pay for the additional distance that he is required to travel, paying him pro rata, which in this case was \$172.75. I will read section 592:

The distances stated in the advertisements for mail proposals are given according to the best information; but no increased pay will be allowed, should they be greater than advertised, if the points to be supplied are correctly stated. Bidders must inform themselves on this point, and also in reference to the weight of the mail, the condition of the roads, hills, streams, etc., and all toll-bridges, ferries, or obstructions of any kind by which expense may be incurred. No claim for additional pay, based on such grounds, can be considered; nor for alleged mistakes or misapprehensions as to the degree of service; nor for bridges destroyed, ferries discontinued, or other obstructions increasing distance, occurring during the contract term. Post-offices established during a contract term are to be visited without extra pay, if the distance be not increased, and at pro rata pay for any increase of distance.

Now, then, they added on a post-office. They increased the distance twenty-three miles, and having done that, as soon as they got their distance circular back that order was made by Mr. French and not by General Brady. Now, the question they are proposing to this witness has relation to a case where a special office has been created that had to be established by service outside of the service to be performed by the contractors. For instance, suppose the people asked for a post-office at a certain place not on any route. Now, the Postmaster-General may establish a post-office there and then he can supply it with special service; but the law simply provides that in establishing this special service which has no relation at all to any contract on any regular route, he cannot go beyond a certain amount.

The COURT. Was not this special service? The route under the contract was from Trinidad by way of Barela to Madison.

Mr. WILSON. That was a regular route.

The COURT. That was a regular route and the route under the contract. Raton was subsequently established. Instead of making it a route for special service they carried this route off in that direction and brought it back again at an acute angle to Barela.

Mr. WILSON. Certainly. That is done every day in the year pretty nearly. That is just as common as any practice.

Mr. MERRICK. It ought to be stopped.

The COURT. Is it not beyond the authority?

Mr. WILSON. Not at all, your honor. It has been the law of the department almost from the beginning of the Post-Office Department. It is done continually and is being done now every day. For instance, a town springs up three or four miles from one of these routes. Instead of creating a new route the Postmaster-General has the power to embrace that office upon the route already in existence.

The COURT. Where is that power? The concluding part of that section I suppose refers to it.

Mr. MERRICK. Is that a law or regulation?

Mr. WILSON. It is a regulation, but it has the force of law because whatever the Postmaster-General does in the way of a regulation is, by express statute, law.

The COURT. It would, of course, have very great weight in a criminal prosecution, whether there is a law for it or not.

Mr. MERRICK. Certainly.

Mr. WILSON. But the law expressly provides that the regulations made shall be the law.

The COURT. Within the limits of the law.

Mr. WILSON. Within the limits of the law. Here this was done exactly in accordance with the regulation.

The COURT. Where is your regulation ?

Mr. WILSON. [Reading:]

Post-offices established during a contract term are to be visited without extra pay the distance be not increased, and at pro rata pay for any increase of distance.

That is to say, if he creates a post-office along a route the carrier must go to that post-office without extra pay if it does not increase the distance. If it does increase the distance, then he visits that office and gets pro rata pay.

Mr. BLISS. I call your attention to the fact that this post-office was not established during the contract term. It existed on the 15th of June, 1878. The contract term was the 1st of July, 1878. Therefore, that regulation cannot have anything to do with this matter.

Mr. WILSON. They established it as an office on this route.

The COURT. But no mail went to it.

Mr. WILSON. Yes; the mail did go to it as soon as they established it.

Mr. TOTTEN. There cannot be any pretense that the Second Assistant Postmaster-General established this post-office. Somebody established it as long ago as 1878.

The COURT. That is another question.

Mr. TOTTEN. That is another question; but there was a post-office there, and your honor will remember it was put there by proper authorities, either by act of Congress or by the Postmaster-General. Under the regulation it was the duty of the Second Assistant Postmaster-General to supply that post-office with mail. That was done in this way, and it was done correctly. The question of establishing a post-office is not one to be considered here.

Mr. WILSON. My objection to this question is that he is asking the witness what his salary was or what his pay was as postmaster at that office. I say it has nothing to do with this case.

Mr. BLISS. Now your honor will bear in mind that the application for the post-office at Raton, and for its mail connection, directed attention to the connection of that office with Pulaski, on the railroad, and that it had the all-powerful indorsement of the Senator recommending

Instead of sending it there by an increase of twelve miles to a railroad it is sent twenty-three miles as they say, thus making an acute angle to this other route.

The COURT. Who made that order ?

Mr. BLISS. Brady made the order connecting it with the route. They say it is done in accordance with the distance circular. In the first place it says without increase of pay or distance. Then they say the distance circular increases it, and they increase it twenty-three miles. The uncontradicted evidence is that it increased it but fifteen miles in fact. Now, we have the distance circulars. I put them in evidence, and I knew what I was doing when I put them in. One of these distance circulars says that from San José to Madison, is seventeen miles. The second one says that from San José to Madison, is twenty-five miles. The first distance circular foots up forty-five miles. The second distance circular in which the distance from San José to Madison has grown eight miles, foots up sixty-eight miles, the other increases being a consequence of Raton coming in. So they take that distance of twenty-five miles in the second distance circular between San José and Madison, that the first distance circular made only seventeen miles, and they say that with Raton on it foots up sixty-eight miles, and therefore the distance is increased to the difference between sixty-eight miles and forty-five miles, the distance of the first circular, to wit, twenty-three miles. Of that twenty-three miles added there is eight miles

which is the bogus additional distance caused by the distance from San José to Madison. They accept the first distance circular in its aggregate as forty-five miles, but they reject it in its details when they come to compare it with the subsequent distance circular. That is the way by which they obtained the twenty-three additional miles and put this extra allowance on to the route where these gentlemen were contractors, and not where the postmaster and Senator asked it should go. We say, therefore, not only that this was done in violation of duty but also in violation of law, and that even though Mr. Brady might not be directly bound by the act of his chief clerk, Mr. French, in making the order allowing the increased pay and compensation, yet, that Mr. Brady made the original order putting it into the route and wrenching the route from its proper course, and then availing himself of and ratifying Mr. French's act he subsequently went on and ordered expedition over that route at an expense to the Government of over \$2,000.

Mr. TOTTEN. In this estimate of distances, your honor, you will notice that they leave out the distance between Trinidad and Barela. That distance was fifteen miles. The distance to Barela by the way of Raton was thirty-one miles, which would make an increase of sixteen miles. Now, if there was a temporary service running from Barela up to Raton it would make a difference of twenty-two miles, eleven miles up and eleven miles back.

Mr. BLISS. Both of these circulars say the distance from Trinidad to Barela is fifteen miles.

Mr. WILSON. Their own witness has sworn to the accuracy of these circulars.

Mr. BLISS. He has not.

Mr. WILSON. He said from Trinidad to Raton was twenty miles, and from Raton to Barela ten miles.

Mr. INGERSOLL. Eleven.

Mr. WILSON. No, he said ten.

The COURT. He did not say ten. They were putting questions to him about having stations every ten miles.

Mr. TOTTEN. That was before. I marked it on this map.

Mr. BLISS. He swore to fifteen miles.

Mr. WILSON. From where?

Mr. BLISS. He said the difference was about fifteen miles, when including Raton.

Mr. WILSON. I say he said from Trinidad to Raton is twenty miles. If he is here I will ask him now.

The COURT. He is here.

Mr. BLISS. Undoubtedly.

Mr. WILSON. And from Raton to Barela ten miles?

The COURT. Eleven miles, I understood it.

Mr. BLISS. He said ten. It is eleven on the map.

The COURT. It increases the distance sixteen miles by going the

Mr. BLISS. Where your honor counts in eleven he said ten. It makes just fifteen miles. I asked him the question if it added fifteen miles, and he said yes.

Mr. TOTTEN. He said in going over the route he drove one hundred thirty miles, and the other thirty-eight every day, sixty-eight miles. He stated two or three times that the route was sixty-eight miles.

The COURT. On the ground that this is an effort to establish a conspiracy amongst these gentlemen, including the Second Assistant General, I will allow the evidence to go in.

Mr. WILSON. We take an exception.

The COURT. Including the Second Assistant Postmaster-General, by whom that office was established.

Mr. TOTTEN. There is no pretense in the world that the Second Assistant has anything to do with establishing a post-office. The First Assistant does that.

The COURT. He ordered the route.

Mr. TOTTEN. That was after the post-office was established, and it is his duty after the post-office is established to put on the service, and it is no part of his duty, and no part of his rights or power to inquire by what right a post-office was established.

The COURT. He can put service on. It is a matter of discretion whether it is special service or not.

By **Mr. BLISS** :

Q. We will come back to the question : What was your compensation as postmaster?—**A.** During the year 1878 it was 60 per cent. of the stamps I sold.

Q. How much did that amount to?—**A.** It may possibly have been as much as \$17 for the year, but I think about \$11; as we had no service we sold out the stamps and did not do any further business.

Q. Now, how much the next year?—**A.** I was postmaster only one year.

By **the COURT** :

Q. You had a post-office and no postal service in connection with it?—**A.** Yes, sir.

By **Mr. BLISS** :

Q. [Resuming.] Now, in July, 1878, what was the schedule time of the mail on that route from Trinidad to Madison, when the contract commenced?—**A.** I do not know; in July, 1878, no service had yet been furnished at Raton.

Q. And you do not know about the rest of the route at all?—**A.** No, sir; not at that time.

Q. Other than being postmaster you had something to do with the route at some time?—**A.** During one year subsequently I was the main carrier on that route.

Q. What year was that?—**A.** I believe, from October, 1879, until October, 1880.

Q. At that time how many trips a week were made?—**A.** Three trips a week.

Q. Going by Raton?—**A.** Yes, sir.

Q. In what time?—**A.** Twelve hours.

Q. Before you became mail-carrier on that route, who was carrying the mail there?—**A.** Mr. Duncan.

Q. Do you know how many men and horses he used?—**A.** I do.

Q. How many?—**A.** He used one man and two boys at the time I took the route from him.

Q. At that time, what time did the mail leave Trinidad?—**A.** Six o'clock in the morning.

Q. What time did it reach Madison?—**A.** It was supposed to reach Madison at 6 o'clock in the afternoon.

Q. What time did it leave Madison to return?—**A.** At 6 o'clock in the morning, and was supposed to reach Trinidad at 6 o'clock in the afternoon.

Q. When that was done, were there three trips per week, or two trips, or what was it?—A. Three trips per week.

Q. Do you know when it was increased from one trip to three; was it before you took the route?—A. It was before I took the route, and by referring to papers it appears to have been increased May 4, 1879.

Q. Now, when it was increased to three trips per week, do you know whether Mr. Duncan added any men or horses?—A. Yes, sir; he did.

Q. How many?—A. Where he supplied one mail a week he used two horses and a buckboard. Then when it was increased to three trips a week he carried it on horseback, using two boys and one man.

Q. And how many horses?—A. Three horses in daily use.

Q. Did he have any extras?—A. Well, Mr. Duncan bought and sold. When he would wear a horse down he would sell him and buy a fresh one. I never knew him to own more than three at any one time, though he used more than three during the months that he carried it.

Q. When you took your subcontract in May, 1879, how many men and horses did you use?—A. I did not have any specified number. I used three every day.

Q. Did you have any extra for changes?—A. I did.

Q. How many?—A. I kept as many as three extra.

Q. How many men did you have; how many carriers I mean?—A. During three months of the year, December, January, and February, I used two men. During the other months of the year one man carried it through.

Q. During those months when you used two men was there any addition to the number of horses? You said you had three horses in use and three extras for changes, I think?—A. No addition to the number of six; but I made more frequent changes during those three months.

Q. Now, during those three months how was the service performed; on horseback, by sulky, or how?—A. It was during two of those three months on horseback; then not liking that way of carrying on account of the saddles hurting the horses' backs I used a gig, or two-wheeled sulky, as they call them out there, drove one horse in a sulky, one man riding on the sulky and carrying a mail pouch.

Q. With whom did you make your contract?—A. I took the route from Mr. Duncan.

Q. Did you use to go over the route yourself?—A. I did, frequently.

Q. You were not driving on the route, were you?—A. The first two weeks I had the route I carried it myself, in order to learn the route.

Q. After that did you carry it?—A. After that I went over it occasionally.

Q. You do not count yourself as one of the men that you have named?—A. I do, in that three months. I carried it from Trinidad to Raton.

Q. And in that three months you counted yourself as one of the men in the number you have given?—A. Yes, sir.

Q. After that you do not count yourself?—A. After that one man carried it from Trinidad to Madison.

Q. After you gave up your subcontract to whom did the route pass?—A. I turned it over to Mr. Burgner.

Q. What did this route from Trinidad connect with at the Trinidad end?

The WITNESS. Do you mean what time?

Mr. BLISS. I mean what other mail route, going in what direction and to what places?

A. After the fall of 1878 it connected with the Atchison, Topeka and Santa Fé Railroad bringing mails from the East and from the South,

and it connected with the Denver and Rio Grande Railroad bringing mails from the North.

Q. When the mails got to Trinidad they got there, I think you said, six or seven in the evening, coming over this route. Did you not say so?—A. You have not asked me any such question.

Q. I thought I asked you what time you left?—A. As I told you, on this Madison route, we left at 6 o'clock in the morning.

Q. And got to Trinidad when?—A. We left Trinidad getting to Madison at 6 o'clock in the evening, and from Madison we arrived at Trinidad 6 o'clock in the evening.

Q. Now when mail got to Trinidad 6 o'clock in the evening, did it go further by the railroad that night, or did it remain over there?—A. I cannot answer your question except partially.

Q. Answer it as far as you know.—A. We never had any instructions to make connections with the railway trains.

Q. Did you, in fact, connect with the railway trains?—A. We never did to my knowledge.

Q. In leaving Trinidad in the morning with the mails, did you connect with the railway trains?—A. We did not while I carried it.

Q. While you were carrying the mail did you correspond with anybody in Washington with reference to the service?—A. I did.

Q. With whom?—A. Mr. Rerdell.

Q. [Submitting a paper to the witness.] Please look at this letter, dated April 3, 1880, and tell me if you received it?—A. [After examining the same.] Yes, sir; I received this letter.

Mr. BLISS. The letter is as follows:

WASHINGTON, D. C. *April 3rd, 1880.*

W. DE BUSK,
Trinidad, Colorado:

DEAR SIR: Yours of the 27th ult. to hand. In reply have to say that all communications relative to route No. 3-140 shall be directed to you in accordance with your instructions.

Please let me know at once to whom I shall send the pay for the quarter just ended.

Very truly, yours,

M. C. RERDELL.

[The letter just read was submitted to the clerk to be marked, and was by him marked 16 K.]

Another letter, which is as follows:

WASHINGTON, D. C., *Oct, 21st, 1880.*

W. DE BUSK,
Trinidad, Colorado:

DEAR Sir: Yours of the 23rd ultimo is at hand, inclosing certificate of service for the quarter ending Sept. 30th.

I also noticed that Mr. William Burgner is to serve the route in the future and shall, as directed, make payment to him.

Very truly,

M. C. RERDELL.

[The letter just read was submitted to the clerk to be marked for identification, and was by him marked 17 K.]

Mr. WILSON. Mr. Rerdell is described there as agent.

Mr. BLISS. It is stamped up in the corner, "M. C. Rerdell, agent, box 06," on one, and the same on the other. The signature in both cases is M. C. Rerdell, not M. C. Rerdell, agent.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Can you tell me at what time the post-office at Raton was established?—A. I cannot; I can give you the date of the commission to the first postmaster there.

Q. What was that date?—A. January 31, 1878.

Q. That was your commission, was it?—A. Yes, sir.

Q. Now, you say you got no service for some time after that?—A. Not until the following January.

Q. Prior to the time the service was put on that route of course you got no mail?—A. We received our mail at Trinidad, and carried it in a pouch of our own.

Q. Did you have special service from Trinidad to Raton?—A. No, sir.

Q. How did you get your mail?—A. By some one from the community going to Trinidad, the county seat, as often as two or three times a week. It was an understood thing among a few of us that whoever went would carry the mail pouch and bring back our mail.

Q. That is the way that post-office was supplied?—A. It was supplied that way for two years.

Q. Then they embraced it on this route. How long after the post-office was put on this route was it before you began to get the mail?—A. From January, 1878, until January, 1879.

Q. And it was not put on this route until long after January, 1878?—A. I don't know about that. I received official notice that a post-office had been established there, and on complying with the terms of that notice a commission was sent me, dated as I have told you.

Mr. MERRICK. When was it dated?

The WITNESS. The commission was dated January 31, 1878.

Q. [Resuming.] Were you authorized to employ temporary service to supply that route, not to exceed two-thirds of your salary, until the route should be otherwise supplied?—A. I was not. I received no notice on the subject.

Q. You say in this letter, dated the 18th of September, 1878:

This office was established to accommodate the lowermost section of a rich valley, thirty-five miles in length, extending eastward from the town of Trinidad; but no mail service has yet been ordered.

The community to be accommodated has for two years past received their mail from Trinidad, twenty-two miles distant, in a private sack, at great inconvenience.

The people here (cattle men mostly) have business transactions to the extent of certainly not less than \$50,000 annually. They have one school and church building, costing \$2,000, one high-school, fifty-one pupils enrolled, one resident clergyman, well-improved farms, with Government title, etc.

That is all true, is it?—A. I presume that date as to the establishment of the post-office is not correct. As I stated, when I identified that letter, I wrote from memory. Since then I have referred to papers which bear the date of my old commission.

Q. It is substantially correct?—A. It is all correct, except that date. I don't think that date is correct. I know it is not.

Q. Now, you say:

The newly finished branch of the Atchison, Topeka and Santa Fé Railroad passes within ten miles of Raton P. O. Pulaski P. O. is 12 miles distant from Raton and directly on this line of railroad.

Now, in point of fact, was there any post-office at Pulaski?

The WITNESS. At that time?

Mr. WILSON. Yes.

A. I understand that there was, and that they received a mail once a week from Trinidad.

Q. You might be mistaken about there being a post-office at Pulaski, might you not?—A. I don't think I am.

Q. You may not be. My information is right the other way?—A. I do not see how I can be mistaken.

Q. Do the trains stop at Pulaski?—A. There was no town at Pulaski. There is only a station just a few hundred yards from the post-office at Pulaski.

Q. There was no town there?—A. No, sir; no town; simply a station, a switch, a water-tank.

Q. You think there was a post-office at Pulaski at that time?—A. I never had any doubt of it until since you raised the question.

Q. [Quoting:]

The object of this communication is to petition for mail service twice a week, if not from any central point to Raton, at least from Pulaski P. O. on the A., T. & S. F. R. L. to Raton, a distance of 12 miles.

Now what you were after was to get service to Raton, was it?—A. That is what I was after.

Q. You wanted it either from Trinidad or Pulaski, was that it?—A. I did not care much where it was from, so we got it.

Q. You had no special preference for Pulaski over Trinidad?—A. I had none for Pulaski over Trinidad, except I thought we were more likely to get it from a near point than from a distant one.

Q. Now, here was a route running from Trinidad around down through that country to Madison, and you were after the service?—A. Yes, sir.

Q. And the service was put on from Trinidad to Madison by way of Raton?—A. Yes, sir.

Q. Or that service that went to Madison was put on by way of Raton. Then after that you got your mails?—A. Yes, sir; we received three mails per week.

Q. Do you remember what kind of weather it was in the winter of 1880?—A. I remember that very distinctly.

Q. Was that the winter that Mr. Burgner was carrying the mail?—A. The winter of 1880-'81; yes, sir.

Q. What kind of a winter was it?—A. Unlike any that I have ever seen in that country.

Q. In what respect?—A. It was the most severe winter I have ever seen.

Q. How was it with reference to snow?—A. The country was locked up in snow for about one hundred days.

Q. An unusually deep snow?—A. Entirely unusual. The country is very seldom locked long at a time.

Q. In ordinary seasons, is there any special difficulty in carrying the mail from Trinidad to Madison?—A. Only for a few days at a time.

Q. When there would be occasional heavy snows?—A. When there is heavy mud or heavy snows. Our snows ordinarily melt off in a few days, but that winter it did not melt for three months and more.

Q. Was Trinidad the county seat of your county?—A. Yes, sir.

Q. [Submitting a sketch map to the witness.] I wish you would indicate on this map where Barela should be?—A. It should be on the east side of this stream, instead of on the west side. [Indicating.]

Q. How far from the stream?—A. It is almost immediately on the back of it.

By Mr. BLISS:

Q. Which should be moved, the stream or the location of Barela?—

A. Well, I could not say.

Mr. BLISS. I am looking with reference to the angle.

Mr. WILSON. You put the stream there. You say it is right according to the topographer. That is all I know about it.

Mr. BLISS. The witness says it is not right.

Mr. WILSON. You put your town on the wrong side of the river.

Mr. BLISS. I am putting Barela on the east side, and I am asking whether it would not make that angle more acute.

The WITNESS. If I were going to correct the map I would move the stream.

The COURT. [To the witness.] Do you say Barela is marked about the right place, but the stream is in the wrong place?

Mr. WILSON. If your honor will look at the line you will see that from Raton to Barela, and the jury will see the same thing, it is marked eleven miles.

The WITNESS. That stream, San Francisco, is away around in the mountains, the head of it.

Mr. WILSON. Then the next town, Barela to Grinnell, is twelve miles, and it is pretty nearly twice the length.

The COURT. Oh, no.

Mr. WILSON. It is a good deal more. One scale won't fit the other. If you would make one line twelve the other one would not make eleven.

The COURT. Still, if Barela is in the right place now, and the stream is wrong, that would make no difference.

Mr. WILSON. There is something wrong there, that is very certain.

The COURT. The exact proportion is not preserved between the eleven mile line and the twelve mile line.

Mr. WILSON. Well, I do not care anything about it.

The COURT. The proper proportion is not preserved between these two lines exactly, but I do not see that that makes any difference as to Barela.

By Mr. HENKLE:

Q. When did you say you began carrying this mail on this route?—

A. The 1st of October, 1879.

Q. And you said, as I understood you, that you received your directions from Mr. Rerdell?—A. Yes, sir.

Q. Did you ever know anybody else in it?—A. I always understood Mr. Rerdell was an agent.

Q. For whom?

Mr. MERRICK. [To witness.] State what you knew?

Q. Whom did you understand to be his principal?

Mr. MERRICK. [To witness.] No, not what you understood; nothing about that. State what you know.

Q. I ask who you understood you were dealing with.

The WITNESS. I am ready to answer the question whenever you agree on it.

Mr. MERRICK. State what you know, of your own personal knowledge?

Mr. BLISS. [To the court, who was engaged for the moment.] May I interrupt your honor a moment? The question is put to this witness as to whom he understood he was dealing with in connection with this contract. He said that he dealt with Mr. Rerdell. Counsel was

asking him whom he understood he was dealing with. We object to it.

Mr. HENKLE. He says he got his directions from Mr. Rerdell; that he understood Mr. Rerdell was the agent of somebody. Now I ask him whom he understood was the principal with whom he was dealing through this agency of Mr. Rerdell.

The COURT. To whom did he make the first response that he "understood"?

Mr. BLISS. To them. We have asked nothing upon that.

Mr. MERRICK. I asked that the statement that he understood Mr. Rerdell was the agent be stricken out, and that it be limited to his knowledge of the facts, and not his understanding.

The COURT. If he got his information from Rerdell, I do not see why it should be objected to. It is part of the transaction, and whether Rerdell signed that paper as principal or signed it as agent, I think might be proved.

Mr. HENKLE. They offer letters from Mr. Rerdell which contained the name "agent."

Mr. MERRICK. Not at all.

Mr. HENKLE. Well, upon the letters there is that in the corner.

The COURT. It is printed "Rerdell, agent," upon a blank sheet of paper.

Mr. HENKLE. Upon the paper upon which he wrote his letter.

The COURT. Well, the paper was partly printed.

Mr. HENKLE. Yes, sir. Now I want to know whom this witness understood to be the principal.

The COURT. Understood from whom?

Mr. HENKLE. Understood in any way.

Mr. INGERSOLL. Either from Rerdell or the principal.

Mr. HENKLE. Either from the principal or from Rerdell, or in any other way, so that he acted upon it and recognized it.

The COURT. If he can state that he was informed by Rerdell or by the principal, he may give the information; but mere rumor or conjecture he cannot give.

By Mr. HENKLE:

Q. Whom did you understand Mr. Rerdell to say was his principal?

—A. Mr. Rerdell never gave me any information on the subject as to whom he was acting for.

Q. Now, had you any information which you regarded as authoritative as to who the principal was?

Mr. MERRICK. Wait a moment.

The COURT. That question is objectionable.

By Mr. HENKLE:

Q. Then, I want to ask you whether you ever knew Mr. Miner?—A. I never did until I was introduced to him a few days ago.

Q. Did you ever understand that Mr. Miner had any connection with that service after you took charge of it?

Mr. MERRICK. Wait until the court says you may answer it—not what you understand.

The COURT. You may ask him if he was ever informed by Mr. Miner.

By Mr. HENKLE:

Q. Were you ever informed by anybody—

The COURT. [Interposing.] Not by anybody, but by anybody having authority to give him the information.

Q. [Resuming.] Well, by anybody having authority to give you in-

formation that Mr. Miner had any connection with that route after you assumed the service?

Mr. MERRICK. Will your honor let him designate from whom he had authority?

The COURT. Let him answer this question first.

Mr. HENKLE. What is your answer?

The WITNESS. Repeat the question, please.

Q. [Repeating.] Did you ever understand from anybody having authority to make the representation that Mr. Miner had any connection with this route after you took charge of it?—A. I had information on that subject from a party whom I supposed had authority and knowledge to inform me correctly.

Q. Who was the party?—A. Mr. Duncan, the gentleman from whom I took the contract.

Q. That was before you took it?—A. It was just before I took it; at the time I took it.

The COURT. He had no right to speak on that authority, because it would have been mere hearsay at any rate.

Mr. BLISS. Mr. Duncan was the subcontractor with Mr. Miner, sir.

Mr. HENKLE. Mr. Miner did run this route until the 1st of April, 1879.

The COURT. Mr. Duncan was the subcontractor of Miner, but not the agent of Miner.

Mr. HENKLE. Mr. Miner run this route until the 1st of April, 1879, and Mr. Duncan was his subcontractor. I want to know whether, after that time, he had information as to Mr. Miner's having connection with it.

Q. If you have, state it.—A. I can only tell you what Mr. Duncan stated to me and proposed to prove by his papers.

Mr. HENKLE. I do not want what Mr. Duncan said.

The WITNESS. Mr. Duncan made the statement and offered to show me his contract and other papers in proof of the real status of the thing, before I began to serve the route.

Q. That was prior to April, 1879?—A. Prior to October, 1879; it was just about October, 1879, when I was taking the route from Duncan.

Mr. MERRICK. I have no objection.

The COURT. If you withdraw your objection he may make answer.

Mr. MERRICK. I withdraw my objection.

Mr. HENKLE. The information was received from Mr. Duncan prior to April. Mr. Duncan ran that mail for Mr. Miner subsequently.

Mr. MERRICK. I withdraw my objection to his other questions prior to that.

The COURT. It is all withdrawn now.

Mr. HENKLE. Yes, sir.

By Mr. BLISS:

Q. [Submitting a paper to witness.] Please look at that paper and see if you recognize it?—A. [After examining the same.] That looks like a copy of a subcontract that Mr. Duncan showed to me.

Q. You do not recognize it as the original?—A. What Mr. Duncan showed to me may have been a copy and this the original, for anything I know.

Q. When did he show it to you?—A. On or about October 1, 1879, when I took the contract from him.

Q. And you took the contract from Mr. Duncan on the faith of a con-

et that he had with Mr. Miner?—A. I did—no. I wish to correct at. Not on the faith of a contract he had with Mr. Miner. That was t what he told me.

Mr. MCSWEENEY. [Facetiously.] Mr. Merrick now renews his objec-
on.

Mr. MERRICK. No, sir.

Mr. BLISS. If they do not object I would like to have him state.

The WITNESS. I quizzed Mr. Duncan very closely to satisfy myself d he gave me certain information, but it turned out that Mr. Duncan is not correct in every particular.

HENRY W. WHEELER recalled and examined.

By Mr. BLISS :

Question. What are the papers you handed me just now ?—Answer. eports from warrants on routes 35015, Dakota; 38145, 38152, and 38156, olorado, and 46132 and 46247, California.

Q. These are the warrants and the statements of account on these veral routes ?—A. Yes, sir.

Q. Which are the ones on 38140 ?—A. That was not called for.

Q. Will you please bring it ?—A. Yes, sir.

Mr. BLISS. That is all until you bring that. Your honor ruled be- re recess that we should put in the contents of the jacket which were it in on the ground that the papers were referred to in it.

I now proceed to do so:

WASHINGTON, D. C., *M'y 10th*, 1879.

DR. THOMAS J. BRADY,

2d Assist. P. M. Gen'l :

SIR : I have the honor to transmit herewith additional petition, asking for increase service on route 38140, from Trinidad to Madison, Col., and to request that it be ced on file.

Respectfully,

JNO. R. MINER.

[The letter just read was submitted to the clerk to be marked, and as by him marked 18 K.]

Mr. HENKLE. I object to that letter.

Mr. BLISS. Your honor rules that we must put it in.

The COURT. It may go in for what it is worth.

Mr. HENKLE. I say that is not Mr. Miner's signature.

Mr. MERRICK. Is it a forgery ?

Mr. HENKLE. I say nothing about that. I say it is not his signa-
ire.

The COURT. The reason it is admitted in evidence is not applied to r. Miner as because it was a foundation of an order set out upon the ack of the jacket and which referred to the papers, and whatever the apers are, genuine or false—

Mr. HENKLE. [Interposing.] I do not know, but the paper is ben- icial to the defense. I don't know what it is, but I want to object to e introduction of the letter because it appears to connect my client ith this route with which he had nothing to do.

Mr. BLISS. Mr. Henkle is testifying a good deal to-day, sir.

Mr. HENKLE. I object to it and reserve an exception. I object to it ecause it is not proved.

The COURT. You have your objection upon the record.

Mr. BLISS. I will now read the petition :

TRINIDAD, COLORADO, *April 15th, 1879.*

To the POSTMASTER-GENERAL,
Washington, D. C. :

SIR: The undersigned, citizens of Trinidad, Colorado, beg to earnestly ask that the mail service on the route between this place and Madison, New Mexico, be increased to three times a week, and the time made faster than it now is if possible. This route supplies a large and intelligent class of people in this State, as well as in the Territory of New Mexico, who are now greatly inconvenienced by not having proper postal facilities. We believe the public interest will be subserved by this increase, and we hope it will be ordered immediately.

That is signed by twenty-one persons, I think.

[The paper just read was submitted to the clerk to be marked, and was by him marked 19 K.]

The next paper is as follows :

LINWOOD, LAS ANIMAS CO., COL., *March 2, 1880.*

THOMAS J. BRADY,
Washington, D. C. :

DEAR SIR: I sent you several weeks back, five bids for special mail carriers from this office to Hoehne station on the A., T. & S. F. R. R., and have not heard from you in regard to the matter. Will you please inform me at your earliest convenience what action has been taken in regard to it, and whether we are likely to be furnished with a service as we are now and have been for over a year carrying the mail at our own expense. Hoping to hear from you soon,

I remain, your ob'd't servant,

W. T. BURNS, P. M.

[The letter just read was submitted to the clerk to be marked, and was by him marked 20 K.]

The next is a letter, and is as follows :

TRINIDAD, COLO., *May 5th, 1879.*

Hon. T. J. BRADY,
Second Assist. P. M. General, Washington, D. C. :

DEAR SIR: I have this day forwarded a petition to you through Hon. S. W. Dorsey for an increase of mail service between Trinidad, Colorado, and Madison, N. M., for 100 miles SE. of Madison. The people have to go to that point for their mail and when it only arrives once a week it inconveniences the settlers very much. The country along the line is settling up very fast, and the public demand it.

I suppose you are bothered so much with petitions that it takes a great deal of your time. I hope you will consider this one and favor us as we are an isolated people and can only appeal to you for assistance. With the wishes of many for your present action in the matter. I remain,

Respectfully,

W. G. RIFENBURG.

Mr. MERRICK. What is its date, and what date was it filed ?

Mr. BLISS. It is dated May 5th, 1879, and filed May 10th, 1879.

[The letter just read was submitted to the clerk to be marked, and was by him marked 21 K.]

The next is a letter, and is as follows :

NEW YORK, *April 21st, 1879.*

Hon. D. M. KEY,
Postmaster-General, Washington, D. C. :

DEAR SIR: Friends of mine who are dependent for their mail on the route from Trinidad to Madison, very much desire to have the service made three times a week, and to have the trip made in one day. You will oblige me very much, and accommodate a large number of people, by considering this application favorably.

Yours, respectfully,

J. B. CHAFFEE.

It is dated April 21, 1879, and filed in the department April 24, 1879.
[The letter just read was submitted to the clerk to be marked, and was by him marked 22 K.]

The next is a letter, and is as follows :

HOUSE OF REPRESENTATIVES, U. S.,
Washington, D. C., April 28, 1879.

Sen'r THOMAS J. BRADY,
Second Asst. P. M. G.:

SIR: I am daily in receipt of letters from Trinidad asking that the mail service between that point and Madison, New Mexico, be improved both as to number of times when the mail shall be carried, and also as to the speed with which it is carried. I am informed that the business between the two places is increasing, and that the public interests require that the time mentioned in the present schedule should be shortened or reduced so that the mail may get through the same day it is sent. In view of the number of letters I have received on this subject, I feel warranted in requesting that it be done.

Very respectfully, your ob'd't serv't,

JAS. B. BELFORD.

[The letter just read was submitted to the clerk to be marked, and was by him marked 23 K.]

That letter was filed April 29, 1879.

Inclosed in that letter is a newspaper slip. At the top is the number, "38140," in writing :

THE ENTERPRISE AND CHRONICLE.

TRINIDAD AND ELMORO, APRIL 26TH, 1879.

J. M. Rice, editor and proprietor.

The petition for increase of mail service on the Trinidad and Madison route has been extensively signed by our business men. There is no doubt of the propriety of this increase, and it should be arranged for by the department at the earliest possible time.

[The newspaper slip just read was submitted to the clerk to be marked, and was by him marked 24 K.]

There is one other paper inclosed in that jacket not read. It is figures in red ink.

The COURT. You do not care about putting those in evidence.

Mr. BLISS. The figures may become important, sir. The figures we suppose are the basis on which the expedition was reckoned.

The sheet containing the figures is as follows :

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., , 187 .

$$\begin{array}{r}
 14 \\
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 15
 \end{array}$$

[The sheet containing the figures was submitted to the clerk to be marked for identification, and was by him marked 25 K.]

Mr. BLISS. [Submitting a paper.] General Henkle, you called for a paper filed on route 38102. This is it.

Mr. HENKLE. [Handing paper to Mr. Bliss.] You can put that in or not, as you please.

Mr. BLISS. Your honor ruled that we must put it in, because the jacket refers to it.

Mr. HENKLE. I say, if the court please, that that is not the signature of Mr. Miner.

Mr. BLISS. Another forgery.

Mr. HENKLE. If I am permitted to state the circumstances under which it was signed I will be glad to do it.

Mr. MERRICK. You need not go on the witness-stand. We will let the jury compare them.

Mr. HENKLE. I say it is not his signature, and I want that fact distinctly understood.
The COURT. We understand it.
Mr. MERRICK. It is a very good imitation.
Mr. BLISS. [Reading:]

WASHINGTON, D. C., December 6, 1880.

JOHN THOMAS J. BRADY,
Second Assistant P. M. General:

SIR: We have the honor to request that the subcontract of S. W. Dorsey on routes nos. 38102, 38112, and 38140 be withdrawn from the files of the P. O. Department and canceled, as the said S. W. Dorsey is no longer subcontractor on said routes, from January 1st, 1881.
Very respectfully,

JNO. R. MINER,
Contractor.
S. W. DORSEY,
Subcontractor.

[The paper last read was marked by the clerk 26 K.]
Mr. MERRICK. There is also a paper admitted to be in S. W. Dorsey's handwriting. There is no dispute about that.
Mr. BLISS. I will now put in the record of productiveness on the route from Trinidad to Madison. The gross revenue of the office at Trinidad for the fiscal year ending June 30, 1881, was \$5,585.76; the net revenue, \$3,385.76. The gross revenue of the post-office at Raton for the same period was \$69.31; the net revenue, \$52.34. The gross revenue for the post-office at Barela was \$208.35; the net revenue, \$33.46. For the post-office at San José the gross revenue was \$20.70; the net revenue, \$13.36. For the post-office at Madison the gross revenue was \$115.33; the net revenue, \$38.19.
The table complete is as follows:

Form of certificate.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, J. H. Ela, auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this office, showing the gross and the net revenues of the post-offices located on route No. 3140, Trinidad to Madison, Colorado, from July 1st, 1878, to June 30th, 1881.
In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, this 12th day of June, in the year of our Lord one thousand eight hundred and eighty-two.
[SEAL.] J. H. ELA, Auditor.

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Trinidad, Colorado; supplied by railroad and by routes 38189, 38141, 38165, 39116, 39119, and 38234.	3 qr., 1878..	\$992 29	.....	\$817 29	.....
	4 " " ..	1, 421 37	.....	1, 046 37	.....
	1 " 1879..	1, 354 76	.....	979 76	.....
	2 " " ..	1, 281 67	.....	906 67	.....
		5, 060 09	.....	3, 550 09	.....
	3 qr., 1879..	1, 290 55	.....	745 55	.....
	4 " " ..	1, 238 03	.....	763 03	.....
	1 " 1880..	1, 509 41	.....	1, 034 41	.....
	2 " " ..	1, 342 60	.....	867 60	.....
		4, 310 59	.....	3, 410 59	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
	3 qr., 1880..	\$1,200 16	.....	\$740 16	.....
	4 " " ..	1,415 36	.....	865 36	.....
	1 " 1881..	1,301 52	.....	841 52	.....
	2 " " ..	1,468 72	.....	936 72	.....
		5,585 76	.....	3,385 76	.....
Raton, Colorado.....	3 qr., 1878..	.....	.....	.....	.....
	4 " " ..	.....	.....	.....	.....
	1 " 1879..	3 80	.....	2 20	.....
	2 " " ..	6 75	.....	4 24	.....
		10 55	.....	6 44	.....
	3 qr., 1879..	6 70	.....	2 75	.....
	4 " " ..	14 23	.....	10 28	.....
	1 " 1880..	15 64	.....	10 18	.....
	2 " " ..	9 52	.....	4 07	.....
		36 00	.....	27 28	.....
	3 qr., 1880..	13 63	.....	8 63	.....
	4 " " ..	22 17	.....	17 80	.....
	1 " 1881..	18 44	.....	13 64	.....
	2 " " ..	15 07	.....	11 98	.....
		69 31	.....	52 34	.....
Barela, Colorado.....	3 qr., 1878..	45 08	.....	17 61	.....
	4 " " ..	68 85	.....	25 54	.....
	1 " 1879..	84 07	.....	25 93	.....
	2 " " ..	90 00	.....	37 62	.....
		283 00	.....	106 70	.....
	3 qr., 1879..	49 00	.....	22 08	.....
	4 " " ..	41 30	.....	06	.....
	1 qr., 1880..	76 60	.....	30 00	.....
	2 " " ..	20 80	.....	\$16 40	.....
		187 70	Less credits ..	35 56	.....
	3 qr., 1880..	74 10	.....	29 32	.....
	4 " " ..	72 80	.....	25 48	.....
	1 " 1881..	31 35	.....	11 75	.....
	2 " " ..	30 00	.....	9 37	.....
		208 35	Less credits ..	54 78	21 38
			.....	21 22	.....
			.....	33 46	.....
Alfalfa, Colorado.....			No account ..	.....	.....
San José, Colorado.....	3 qr., 1878..	4 71	.....	3 98	.....
	4 " " ..	5 98	.....	3 31	.....
	1 " 1879..	6 75	.....	2 68	.....
	2 " " ..	8 63	.....	3 88	.....
		26 07	.....	13 79	.....
	3 qr., 1879..	5 80	.....	03	.....
	4 " " ..	6 50	.....	3 05	.....
	1 " 1880..	5 05	.....	2 42	.....
	2 " " ..	5 02	.....	2 36	.....
		22 46	.....	8 37	.....
	3 qr., 1880..	2 06	.....	05	.....
	4 " " ..	2 60	.....	08	.....
	1 " 1881..	15 86	.....	13 26	.....
	2 " " ..	08	.....	.....	1 05
		20 70	Less credits ..	14 41	.....
			.....	1 05	.....
			.....	13 36	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credite.
Madison, New Mexico	3 qr., 1878..	\$15 07	.....	\$2 91	.....
	4 " " ..	25 85	.....	15 47	.....
Supplied by route No. 39113.....	1 " 1879..	23 98	.....	9 80	.....
	2 " " ..	29 10	.....	12 98	.....
		94 00	.....	41 16	.....
	3 qr., 1879..	24 09	.....	10 69	.....
	4 " " ..	23 68	.....	13 68	.....
	1 " 1880..	24 44	.....	11 22	.....
	2 " " ..	31 47	.....	13 46	.....
		103 68	.....	49 05	.....
	3 qr., 1880..	27 12	.....	11 68	.....
	4 " " ..	20 40	.....	8 59	.....
	1 " 1881..	40 30	.....	18 23	.....
	2 " " ..	27 51	.....	4 69	.....
		115 33	.....	38 19	.....

I will occupy the remainder of the time by putting in the records of payment upon some of the routes that we have gone over, which records were omitted at the time. I will first take up route 46132, from Julian to Colton.

Warrant 13491, dated December 7, 1878, for \$400.20. Pay to the order of Benjamin U. Keyser, receiver of the German-American National Bank, assignee of John M. Peck. Indorsed by Mr. Keyser as such assignee.

Warrant 13492, for \$296.12, dated December 7, 1878, to H. M. Vaile, assignee of John M. Peck, or order. Annexed an account of the United States with John M. Peck upon various routes, including this route, and showing a balance due upon this route of \$297 per quarter, per contract.

An order dated Chico Springs, New Mexico, 1878, to S. F. Austin, assistant cashier German-American National Bank, \$2,542.50, payable out of any money due on routes 40247 and 46132, in the State of California, for the quarter ending September 30, 1878. Signed by John M. Peck.

Warrant dated November 19, 1878, for \$267.30, to the order of J. C. Hayes, subcontractor of John M. Peck. Indorsed by Hayes. Also warrant 12592 for \$1,661.64. Payable to Major & Culverhouse. Dated November 19, 1878. Signed by John M. Peck. Indorsed by Major & Culverhouse. An account annexed showing on route 46132 due \$267.30 as per contract from July 1 to September 30. Annexed a notice dated October 1, 1878, marked in the corner Wm. H. T., that the subcontract of Major & Culverhouse had been filed at the rate of \$7,500 per annum, commencing July 1, 1878, and in case of increase of service, pay as follows: Six trips per week, \$15,000; seven trips per week, \$17,000 per annum. Signed by Thomas J. Brady, Second Assistant Postmaster-General.

Warrant No. 261, dated February 7, 1879. Pay to J. M. Major or J. Culverhouse, \$2,201.09. Indorsed by them.

Warrant No. 3159, dated April 26, 1879; payable to J. A. J. Creswell, president of the Citizens' National Bank, assignee of J. M. Peck, or order, \$5,687.35. Indorsed by Mr. Creswell. Annexed an account showing due on route 46132, \$297. Annexed an order dated Chico Springs, New Mexico, November 1, 1879. Pay H. M. Vaile the amount

due on route specified for the quarter ending March 31, 1879, No. 46132, being one of the routes. Signed by J. M. Peck, contractor, and witnessed by M. C. Rerdell, and Harvey G. Grey.

Warrant No. 3676, dated May 2, 1879, for \$3,577.83. Pay to J. M. Major and J. Culverhouse, subcontractor. Warrant No. 6031, dated July 21, 1879. Pay Lewis Johnson & Co., assignees of John M. Peck, \$954. Annexed an account stated showing \$297 due on route 46132 for the quarter ending June 30, 1879.

Mr. WILSON. You did not read the indorsement.

Mr. BLISS. I will read them if you desire. The last draft is indorsed by Lewis Johnson & Co., assignees of John M. Peck. Below the indorsement I do not know whether there is a flourish or an N. The other draft is indorsed by Major and Culverhouse, subcontractors, with a certificate that the signature is genuine. Annexed to these warrants is a notice of the filing of the subcontract of H. M. Vaile, at \$1,188 per annum, the notice being signed by Thomas J. Brady. Then there is annexed an order dated Chico Springs, New Mexico, April 15, 1879. Pay H. M. Vaile the amount due on certain routes for the quarter ending June 30, 1879; signed by Peck, and route 46132 included. Witnessed by Lathrop R. Bacon and Harvey G. Grey.

Warrant 9348, dated October 25, 1879. Pay J. A. J. Creswell, president Citizens' National Bank, assignee of John M. Peck, or order, \$2,428.90. Indorsed by Creswell, assignee of Peck, and by Pearsall, cashier. Annexed an account showing due on route 46132, per contract, \$297, and more per order No. 5880, from July 14, 1879, making \$1,657.71. There is a deduction on that route of \$182.81. Annexed is an order signed by Peck, dated October 1, 1878, to pay Vaile the amount due upon certain routes specified for the quarter ending September 30, 1879, and among those specified route 46132. The order is witnessed by M. C. Rerdell, and James C. Leary.

Warrant 853, dated January 3, 1880. Pay Thomas C. Pearsall, cashier Citizens' Bank, assignee of John M. Peck, \$2,884.50. Indorsed by the payee, and by Mr. Pearsall, as cashier, and by O. D. Baldwin & Co. Annexed an account showing due upon this route \$2,227.50, and an order dated November 1, 1878, to pay to H. M. Vaile the amount due on the specified route, including 46132. Signed by J. M. Peck, and witnessed by M. C. Rerdell, and Harvey Grey.

Warrant 37050, dated April 28, 1880. Pay J. A. J. Creswell, president Citizens' National Bank, assignee of John M. Peck, \$2,871.14. Indorsed by Creswell and others. An account stated annexed showing due on this route \$2,227.50. An order annexed, dated April 1, 1879, pay to H. M. Vaile the amount due upon certain specified routes, including 46132, signed by John M. Peck, and witnessed by M. C. Rerdell and James C. Leary.

Warrant 7597, dated July 30, 1880. Pay Thomas C. Pearsall, cashier Citizens' National Bank, assignee John M. Peck or order, \$2,878.87. Indorsed by Pearsall, cashier. An account annexed showing due \$2,227.50 upon this route. Annexed an order dated April 1, 1879, pay to H. M. Vaile the amount due on various routes, including 46132, signed by John M. Peck, contractor, and witnessed by M. C. Rerdell and James C. Leary.

Warrant No. 11179, dated October 23, 1880. Pay Thomas C. Pearsall, cashier, assignee of John M. Peck, \$2,884.50. Indorsed by Pearsall. An account annexed showing \$2,227.50 due on account of this route. Annexed an order signed by Peck, dated April 1, 1879, to pay

M. Vaile the amount due upon certain specified routes, including route. Witnessed by M. C. Rerdell and James C. Leary.

Warrant No. 2941, dated February 5, 1881. Pay H. M. Vaile, subcontractor, \$2,884.50. Indorsed by Vaile. Annexed an account showing \$2,227.50 due upon this route.

Warrant No. 5787, dated April 30, 1881. Pay H. M. Vaile, subcontractor, \$2,884.50. Indorsed by Vaile. Annexed is an account showing \$2,227.50 due upon this route.

Warrant No. 1158, dated July 28, 1881. Pay H. M. Vaile \$2,884.50. Indorsed by Vaile. Annexed an account showing \$2,227.50 due on account of this route.

THE COURT. All this, I suppose, is for the purpose of showing that money was paid by the Government to these parties.

MR. BLISS. Showing to whom the money went. It becomes important in certain phases of this case to show to whom the money went at certain times upon these routes.

THE COURT. It might be. A number of these warrants are payable to cashiers of banks.

MR. BLISS. But there is always the order annexed. They are payable to the contractor, subcontractor, or to whoever the contractor orders money to go.

THE COURT. Of course.

MR. BLISS. That is all I desire to put in on that route. I will also produce this afternoon the warrants on route 38140.

HENRY W. WHEELER recalled.

By Mr. BLISS:

Question. What are the papers that you have in your hand?—Answer. Warrants and reports on route 38140. [Submitting the same to Mr. Bliss.]

MR. BLISS. That is all. Before passing to these warrants I would like to put in certain of the receipts for warrants on the route from San Antonio to Colton, 46132.

Receipt dated February 6, 1879, for warrant No. 210, signed by H. M. Vaile, contractor, by John R. Miner, attorney.

THE COURT. Is that genuine, General Henkle?

MR. HENKLE. [After examining the paper.] Mr. Miner says it is genuine.

MR. BLISS. I also offer a receipt dated February 12, 1882, for warrants 1706, 1707, and 1708, signed by H. M. Vaile. The other receipts on this route I do not think important, and I will not cumber the record with them.

Now offer warrant No. 11922, dated November 12, 1878. Pay Benjamin U. Keyser, receiver German-American National Bank, assignee of John R. Miner, \$89.61. Indorsed by Keyser and others.

Warrant 11923, dated November 12, 1878. Pay H. M. Vaile, assignee of John R. Miner, \$273. Indorsed by Vaile, assignee.

Warrant No. 11924, dated November 12, 1879. Pay John R. Miner, \$3. Indorsed by John R. Miner. [Submitting paper to Mr. Henkle.] Is that genuine?

MR. HENKLE. That is all right.

MR. BLISS. Annexed an account showing due on route 38140, \$84.50. Also an order signed by John R. Miner, contractor, to pay H. M. Vaile \$84.50, out of any money due on certain specified routes, including 38140.

MR. HENKLE. That is all right.

Mr. BLISS. Warrant 14085, dated January 25, 1879. Pay H. M. Vaile, assignee for John R. Miner, \$1,391.85. Indorsed by Vaile. Annexed an account showing due upon this route for quarter \$84.50, and more per order Nos. 4215 and 10014, \$86.38. Order annexed, signed by John R. Miner, dated October 1, 1878, to pay to the order of H. M. Vaile the entire sum due on certain routes including 38140.

Account showing due upon this route for the quarter ending March 31, 1879, \$127.61. No warrant annexed. Annexed an order signed by John R. Miner, dated October 1, 1878, to pay H. M. Vaile the entire amount due on certain specified routes including this one. Witnessed by M. C. Rerdell and J. M. Edmunds.

Warrant No. 6394, dated July 25, 1879. Pay Middleton & Co., assignees of John R. Miner, \$2,028.77. Indorsed by Middleton & Co. Annexed a statement of account showing due on this route, per contract \$127.69; by order 3677, \$171.18; by order 4256, \$325.81. Annexed is an order dated Washington, D. C., May 19, 1879. Pay to S. W. Dorsey or order the sum of \$622 out of any money due me on route 38140, from Trinidad to Madison, for the quarter ending June 30, 1879. John R. Miner, contractor. Witnessed by M. C. Rerdell.

Mr. HENKLE. That is the way it comes in.

Mr. BLISS. Warrant No. 9368, dated October 27, 1879. Pay Middleton & Co., assignee of Miner, \$3,766.94. Annexed an account showing due \$1,072.57. Annexed an order of Miner dated July 7, 1879. Pay S. W. Dorsey \$1,073.32 on route 38140 for the quarter ending September 30, 1879.

Warrant No. 2667, dated March 1, 1880. Pay to J. W. Bosler, assignee of John R. Miner, \$3,907.15. Annexed an account showing due upon this route \$1,072.57, with deductions, \$38.02. Order annexed dated October 7, 1879. Pay S. W. Dorsey \$1,073.32 out of any money due on route 38140 for the quarter ending December 31, 1879. Signed by John R. Miner. Indorsed by S. W. Dorsey.

Mr. HENKLE. That is all right.

Mr. BLISS. Warrant 5174, dated May 25, 1880. Pay J. W. Bosler, assignee of John R. Miner, \$4,165.29. Annexed an account showing due on this route \$1,072.57, with deductions \$82.65. Order annexed to pay S. W. Dorsey \$1,073.72 out of any money due upon that route for the quarter ending March 31, 1880. Signed by John R. Miner, contractor.

Mr. HENKLE. Who witnessed that?

Mr. BLISS. Witnessed by H. Lloyd Irvine and J. M. Edmunds.

Warrant 9405, dated August 8, 1880. Pay J. W. Bosler, assignee of John R. Miner, \$4,143.57. Account annexed showing due upon this route \$10,072.57, with deductions \$1,818. Annexed an order to pay J. W. Bosler \$1,073.32 out of any money due upon this route. Signed by John R. Miner, and witnessed by H. Lloyd Irvine and J. M. Edmunds. Amount due, \$1,072.57.

Warrant No. 11328, dated October 26, 1880. Pay J. W. Bosler, assignee of John R. Miner, \$3,861.77. Also warrant 11329, dated October 26, 1880. Pay to John R. Miner \$76.76. The first is indorsed by J. W. Bosler, and the second is indorsed: Pay S. W. Dorsey, or order. John R. Miner. Pay M. C. Rerdell, or order. S. W. Dorsey. And then M. C. Rerdell. Annexed is an account showing \$1,072.57 due on account of this route, and also annexed an order dated April 7, 1879, to pay Bosler \$1,073.32 out of any money due upon this route. Signed by John R. Miner, and witnessed by M. C. Rerdell and J. M. Edmunds.

Draft No. 3506, dated February 7, 1881, drawn on the postmaster at

Harrisburgh, Pa. Pay J. W. Bosler, assignee of John R. Miner, \$2,411.18. Annexed an account showing due on this route, \$1,072.57. Annexed an order, dated July 14, 1879, drawn by John R. Miner, in favor of J. W. Bosler, for \$1,073.32 out of any money due upon this route for the quarter ending December 31, 1880. Witnessed by M. C. Rerdell and J. M. Edmunds.

Draft No. 9284, dated April 23, 1881. To the postmaster at Harrisburgh. Pay J. W. Bosler or order, \$3,631.33. Annexed an account showing due on this route, \$1,072.57. Annexed an order, dated October 4, 1879, signed by John R. Miner. Pay to J. W. Bosler \$1,072.57, out of any money due on this route, for the quarter ending March 31, 1881. Witnessed by M. C. Rerdell and J. M. Edmunds.

Warrant No. 1342, dated August 1, 1881. Pay J. W. Bosler, assignee, \$3,873.97. An account annexed showing due on this route \$1,072.57, and also an order annexed, signed by John R. Miner to pay J. W. Bosler \$1,072.57 out of any money due for the quarter ending June 30, 1881. Witnessed by M. C. Rerdell and J. M. Edmunds.

An account without any warrant annexed, showing due upon this route per contract, \$1,072.57 less \$489.66; due \$582.91. Also one month's extra pay, \$43.19; deduction \$6. Order signed by John R. Miner without date, to pay to J. W. Bosler \$1,072.57. Witnessed by M. C. Rerdell and J. M. Edmunds.

Account with no warrant, The United States to John R. Miner on route 38140, for remission of fines ordered January 30, 1880, per order of January 18, 1882, \$6.69, and for remission of fines and deductions ordered May 8, 1880, per order of February 18, 1882, \$19.56. Certified as payable to John R. Miner.

That is all there is upon this route.

The COURT. That concludes the papers on this route.

Mr. BLISS. Yes. Of course, if at any time I find papers with regard to any of the routes that I have omitted and that I deem important, I will put them in.

The COURT. Yes.

At this point (3 o'clock and 20 minutes p. m.) the court adjourned until to morrow morning at 10 o'clock.

FRIDAY, JUNE 30, 1882.

The court met at 10 o'clock a. m.

Present, counsel for the Government and for the defendants.

Mr. BLISS. I will take up next route, 38113, from Rawlins to White River.

CHARLES F. PERKINS sworn and examined.

By Mr. BLISS :

Question. Where do you reside?—Answer. I reside at Dixon, Carbon County, Wyoming Territory.

Q. How long have you resided there?—A. Since 1871.

Q. Have you ever had anything to do with the mail service on the route from Rawlins to White River?—A. Yes, sir.

Mr. BLISS. Mr. Sweeney, whom I desire to examine, has just come in, and if there is no objection I would like to let this witness stand aside a moment.

The COURT. Very well.

GEORGE M. SWEENEY recalled.

By Mr. BLISS:

Question. Were the papers on the route from Rawlins to White River in your section?—Answer. Yes, sir.

Q. [Submitting a paper.] I show you a paper indorsed August 8, 1878?—A. It was indorsed by William H. Turner.

[The witness then numbered the paper 1, and placed upon each subsequent paper identified, the number given in brackets after his answer.]

Q. [Submitting another paper.] I show you a jacket indorsed June 18, 1878?—A. The caption and body of the order are by William H. Turner, and the signature by General Brady. [2.]

Q. [Submitting another paper.] I show you a jacket indorsed October 1, 1878?—A. The caption and body of the order were written by William H. Turner, and the signature by General Brady. [3.]

Q. Look at the contract inside?—A. I do not know by whom it was indorsed. [4.]

Q. [Submitting another paper.] I show you a jacket indorsed December 28, 1878?—A. The caption and body of the order were written by William H. Turner, and the signature by General Brady. There is an inclosure with no indorsement. [5 and 6.]

Q. [Submitting another paper.] I show you a jacket dated November 22, 1879?—A. The caption and body of the order were written by William H. Turner, and the signature by John L. French. [7.]

Q. The paper inside?—A. The date I am unable to identify. The word "Turner" was evidently written by General Brady. [8.]

Q. [Submitting another paper.] I show you a paper indorsed January 22, 1879?—A. Indorsed by Byron C. Coon. [9.]

Q. [Submitting another paper.] I show you a jacket indorsed February 7, 1879?—A. The caption and body of the order were written by William H. Turner, and the signature by General Brady. [10.]

Q. [Submitting another paper.] I show you a paper in that jacket indorsed February 7, 1879?—A. Indorsed by William H. Turner. [11.]

Q. [Submitting another paper.] I show you a jacket indorsed February 7, 1879?—A. The caption and body of the order were written by William H. Turner, the signature by General Brady. [12.]

Q. [Submitting two papers.] I show you two papers in that jacket, neither indorsed, I think?—A. One of them is indorsed, but by whom, I do not know; there is a date on the other, but I do not know by whom put on. [13 and 14.]

Q. [Submitting another paper.] I show you a jacket indorsed May 1, 1879?—A. The caption and body of this order were written by William H. Turner, and the signature and the writing in blue pencil by General Brady. [15.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, April 16?—A. It was indorsed by Byron C. Coon. [16.]

Q. [Submitting another paper.] I show you another paper indorsed 1879, April 16?—A. Indorsed by Byron C. Coon. [17.]

Q. [Submitting another paper.] I show you another paper indorsed 1879, April 16?—A. Indorsed by Byron C. Coon. [18.]

Q. [Submitting another paper.] I show you another paper indorsed 1879, April 16?—A. Indorsed by Byron C. Coon. [19.]

Q. [Submitting another paper.] I show you a pencil calculation of figures?—A. In the handwriting of William H. Turner. [20.]

Q. [Submitting another paper.] I show you a jacket indorsed May 9, 1879?—A. The caption and body of the order were written by William H. Turner, and the signature by General Brady. [21.]

Q. [Submitting another paper.] I show you a paper in that jacket?—A. Indorsed by Byron C. Coon. [22.]

Q. [Submitting another paper.] I show you a letter indorsed 1879, 6, 23?—A. I do not know by whom.

Q. What is the stamp?—A. The stamp is that of the inspection division of the Post-Office Department. [23.]

Q. [Submitting another paper.] I show you a jacket indorsed July 25, 1879?—A. The caption and body of the order were written by William H. Turner, and the signature by John L. French. [24.]

Q. [Submitting another paper.] I show you a paper in that jacket?—A. Indorsed by Byron C. Coon. [25.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, June 6?—A. It was indorsed by Byron C. Coon. [26.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, May 28?—A. It was indorsed by Byron C. Coon. [27.]

Q. [Submitting another paper.] I show you a paper indorsed November 26, 1879?—A. Indorsed by William H. Turner. [28.]

Q. [Submitting three letters.] These were inside of it. I do not know whether they belong to it or not. There is no indorsement on any of them, I think?—A. No, sir; there is no indorsement except the date in pencil.

Q. Do you know whose that is?—A. I do not. [29, 30, and 31.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, August 11?—A. It was indorsed by Byron C. Coon. [32.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, August 8?—A. It was indorsed by Byron C. Coon. [33.]

Q. [Submitting another paper.] I show you a jacket indorsed November 11, 1879?—A. The caption and body of the order were written by William H. Turner, and the signature by John L. French. [34.]

Q. [Submitting another paper.] I show you a paper in that jacket?—A. The indorsement, "November 10, 1878, subcontract," I think, is in the handwriting of William H. Turner. [35.]

Q. [Submitting another paper.] I show you a paper indorsed December 27, 1879?—A. Indorsed by William H. Turner.

Q. The memorandum on the back?—A. This memorandum is in the handwriting of John L. French. The date, I think, was written by Mr. Turner. [36.]

Q. [Submitting another paper.] I show you a paper folded in with that?—A. It has no indorsement or stamp. [37.]

Q. [Submitting another paper.] I show you a paper dated December 11, 1879?—A. The caption and body of the order were written by William H. Turner, and the signature by John L. French. [38.]

Q. [Submitting another paper.] I show you a paper dated October 22, 1879?—A. The caption and body of the order were written by William H. Turner, and the signature by John L. French. [39.]

Q. [Submitting another paper.] I show you a paper indorsed 1878, November 18?—A. Indorsed by Byron C. Coon. [40.]

Q. [Submitting another paper.] I show you a paper dated October 17, 1879, inclosing some figuring?—A. The indorsement was made by William H. Turner. [41.]

Q. [Submitting another paper.] I show you a paper indorsed Lewis E. Chappell, and stamped on the inside?—A. The stamp is that of the contract office of the Post-Office Department. [42.]

Q. Submitting another paper.] I show you a paper indorsed November 18, 1878?—A. I do not know by whom.

Q. What is the stamp on the inside?—A. That of the contract office, Post-Office Department. [43.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, February 5?—A. Indorsed by Byron C. Coon. [44.]

Q. [Submitting two papers.] I show you two papers, duplicates, indorsed 1879, February 5?—A. Indorsed by Byron C. Coon. [45.]

Q. [Submitting another paper.] I show you a paper indorsed August 26, 1879?—A. Indorsed by William H. Turner. [46.]

Q. [Submitting another paper.] I show you a paper indorsed 1879, December 29?—A. Indorsed by Byron C. Coon. [47.]

Q. [Submitting another paper.] I show you a paper indorsed 1881, January 26?—A. Indorsed by William H. Turner. [48.]

Q. [Submitting another paper.] I show you a jacket indorsed May 14, 1880?—A. The caption and body of the order were written by William H. Turner, the signatures and the word "special" by John L. French. [49.]

Q. [Submitting another paper.] I show you a paper in that jacket dated April 10, 1880?—A. I presume it was written by Judge A. A. Freeman, Assistant Attorney-General. I judge that from the signature and not from any knowledge. [50.]

Q. [Submitting another paper.] I show you a jacket indorsed 1880, October 26?—A. The caption and body of this order were written by Byron C. Coon, and the signature by General Brady. [51.]

Q. [Submitting another paper.] I show you an unindorsed paper in that jacket. I simply want it marked?—A. I do not know by whom written. [52.]

Q. [Submitting another paper.] I show you a jacket indorsed 1880, October 20?—A. The caption and body of the order were written by Byron C. Coon, and the signature by General Brady. [53.]

Q. [Submitting another paper.] Inclosed an unindorsed paper headed "contract"?—A. I don't know about that. [54.]

Q. [Submitting another paper.] I show you a jacket headed March 8, 1881?—A. The caption and body of the order were written by William H. Turner. The writing in blue ink across the red and the signature to the order were written by General Brady. [55.]

Q. Submitting another paper.] I show you a paper in that jacket indorsed March 5, 1881?—A. The indorsement in red ink, including and following the date, in the handwriting of William H. Turner. The other indorsement I do not know. [56.]

Q. [Submitting another paper.] In the same jacket an unindorsed petition. If you do not know it just number it?—A. I do not know about that. [57.]

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Are there any other papers on file in your division relating to this route?—A. There are certainly some papers besides these.

Q. Are there papers there in relation to the controversy between the contractor and subcontractor in regard to the pay the subcontractor was to have?—A. I think that such papers are on file, but I am not sure.

Q. Are there papers there in relation to the temporary service that was put on at the time of the Indian troubles, or about that time?—A.

[do not remember about that. There are some papers in regard to temporary service in 1881, I think, but I do not think there are any prior to that time.

Q. The papers that are yet on file, and have not been produced here, are in your division and in your custody, are they?—A. Those that were not turned over. I do not know whether these are all that were turned over to Inspector Woodward or not.

Q. Have any papers that have been turned over to him ever been returned to your division, that you know of?—A. I may have gotten some of them back; I am not certain as to that; for instance, subcontracts, very often.

Mr. WILSON. Will you please bring into court immediately after you leave the stand the papers that you have in your division that have not been introduced here. I desire them very much.

The WITNESS. Very well.

[The witness then left the stand.]

Mr. MERRICK. If your honor please, on route 38135, which was the second route introduced, the stenographer has made a reference to the oath that was offered, but has not incorporated the oath in the report of the testimony. I am therefore forced to read it this morning. It is signed by Miner. [Submitting oath to Mr. Henkle.] If there is any doubt about the handwriting you can say whether that is his handwriting or not, and whether he wrote it.

Mr. HENKLE. [After submitting the paper to Mr. Miner.] That is his signature.

Mr. MERRICK. Is the body of it his, too?

Mr. HENKLE. [After again submitting it to Mr. Miner.] Yes.

Mr. MERRICK. Then, it is all admitted to be in Mr. Miner's handwriting except the signature of the notary. I will read the paper:

WASHINGTON, D. C., April 17th, 1879.

Hon. THOMAS J. BRADY,
Second Assistant Postmaster General:

The number of men and animals necessary to carry the mail on route 38135 three times a week on the present schedule is one man and one animal. The number necessary to carry the mail three times a week on a reduced schedule of seven hours, is two men and four animals.

Respectfully,

JOHN R. MINER.

DISTRICT OF COLUMBIA,
County of Washington:

Personally appeared before me the above John R. Miner, and made oath to the above statement the 17th day of April, 1879.

[SEAL.]

W. F. KELLOGG,
Notary Public.

The paper last read had previously been marked by the clerk 18 B. It should have been inserted at page 521 of the record. I would like to have the jury look at it.

[The paper was submitted to the jury and by them examined.]

Mr. WILSON. Is Mr. De Busk in court?

Mr. BLISS. I do not know.

Mr. WILSON. I would like to recall him if he is.

[Mr. S. W. De Busk was called but did not answer.]

The examination of CHARLES F. PERKINS was then resumed as follows:

By Mr. BLISS:

Question. You stated that you had to do with the mail service on the route from Rawlins to White River. What had you to do with it?—Answer. I have been carrying the mail off and on for six years.

Q. When did you first commence?—A. I first started in 1876, on June 1.

Q. How long did you carry it then?—A. I carried it for two years, to the end of that contract.

Q. How many trips a week were then made?—A. When I first started it there was one trip a week part of the distance, and a monthly mail the balance of the distance. After I got it about two months, it was increased to weekly clear through from Rawlins to White River.

Q. What was the schedule time?—A. I think it was one hundred and eighteen hours.

Q. After July 1, 1878, did you continue to carry it?—I did not right away; no.

Q. When, after July 1, 1878, did you begin to carry again?—A. I think it was in the latter part of November, that myself and Eugene Taylor, had put on temporary service.

Q. From whom?—A. From the postmaster at White River.

Q. How long did you carry it under that temporary service?—A. I carried it, I think, until January 27, 1879.

Q. What then did you do?—A. I made a subcontract with M. C. Rerdell, agent of John W. Dorsey.

Q. Where was that contract made?—A. It was made in Rawlins, Wyo.

Q. Who was personally present, when it was made, representing Mr. Dorsey?—A. M. C. Rerdell.

Q. [Submitting a paper.] Please look at that paper and see if it is the contract?—A. Yes, sir; this is the subcontract.

Mr. BLISS. It is the paper marked by Mr. Sweeney No. 13.

[The subcontract was submitted to counsel for defense, and by them returned to Mr. Bliss without objection.]

Mr. BLISS. This contract provides that whereas John W. Dorsey has been accepted, according to law, as contractor for transporting the mails on route 38113, from White River to Rawlins, once a week and back, from July 1, 1878, to June 30, 1882, now this indenture witnesseth that on the 16th day of January, 1879, John W. Dorsey, party of the first part, and Charles F. Perkins, together with John W. Hugus as surety, making the party of the second part, have agreed as follows:

The said party of the second part agree to transport the United States mail over the route in question, one trip per week, for an annual sum of \$2,500; \$4,000 for two trips, and \$5,100 for three trips a week. It is agreed that in case of an increase the party of the first part shall pay to the party of the second part a certain percent. of pro rata in accordance with the above annual pay. It is agreed by the party of the first part to advance to the party of the second part the sum of \$250 whenever there is an increase of service to three trips a week. Said amount so advanced to be deducted in equal amounts from the two succeeding quarters' pay after such increase is ordered.

The party of the second part is to bear all fines and deductions. The contract was executed by John W. Dorsey, by M. C. Rerdell, his attorney in fact, and by Charles F. Perkins, subcontractor. It is certified by the postmaster at Dixon, Carbon County, Wyoming, on the 28th of January, 1879.

[The contract in question was marked by the clerk 1 L.]

In this connection I offer in evidence the jacket identified by Mr. Sweeney, and numbered 12, as follows :

Date, February 7, 1879.

State, Colorado.

No. of route, 38113.

Termini of route, White River and Rawlins.

Length of route, 180 miles.

No. of trips per week, one.

Contractor, John W. Dorsey.

Pay, \$1,700 per annum.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of C. F. Perkins, (whose post-office address is Dixon, Carbon County, Wyoming), for service on this route, at \$2,500 per annum [and in case of increase of service as follows, namely, two trips per week, \$4,000 per annum; three trips per week, \$5,100 per annum], from January 27, 1879, to June 30, 1882, has been filed in this office.

BRADY.

[The paper last read was marked by the clerk 2 L]

Q. At the time that you made the contract with Mr. Rerdell, was anything said about the schedule time?—A. Yes, sir.

Q. What was it?—A. He wanted to know the shortest time I could carry the mail, and I told him I could carry it in four days. He wanted to know if I couldn't carry it in eighty-four hours, and I studied it over and I told him I could. The new road was afterwards made and the distance was reduced. The reason it was more convenient to me to carry it in four days was, it would make my stopping places better.

Q. He wanted to know if you couldn't carry it in less than one hundred and eight hours?—A. He wanted to know if I couldn't carry it in eighty-four, and I told him I could. He told me he was going to have three trips; that he was going to have petitions got up.

Q. Did you see the petitions?—A. He wrote the petitions, and gave me one of the petitions to get signers on it, to get it circulated, and then he circulated in Rawlins, Wyoming Territory.

Q. How many did he write that you know of?—A. Two or three. Two, I believe, is all I saw.

Q. [Submitting three papers to witness.] Please look at these three papers. I show you papers marked by Mr. Sweeney 16, 17, and 18. See if you ever saw those before?—A. [After examining; holding up one.] This petition was delivered to me by Mr. Rerdell in Rawlins, Wyoming Territory, and I got these signatures on here. I know these signatures, most of them.

Q. They are the signatures of people living at Rawlins are they?—A. These are in Dixon, Wyoming Territory, and vicinity. Dixon is the post-office address of these men. [Holding up another petition.] This I think is a petition circulated in Rawlins, Wyoming Territory. I recognize some of the names on here.

Q. Do you recognize the petition at all?—A. Yes, sir; I think it was written at the same time that the other one was.

Q. What about the other petition you have?—A. [Referring to the third petition.] This is in the same writing.

Q. Do you recognize it?—A. Yes, I recognize some of the signatures on it.

Q. Do you recognize the petitions?—A. I recognize the petitions as being all in the same writing, the same as Mr. Rerdell gave me. I think that he wrote them in Rawlins when I was there. I think I saw him write them—a part of them.

Q. Now as to the signers there?—A. I recognize some of the signers; know some of the names here.

mail. That the community is being rapidly settled by an industrious intelligent class of people, and who have been accustomed to every mail making their want greater. That the mail they should receive by the route to Hahn's Peak, and thence to Windsor is forced to be sent over and thus virtually giving only one mail a week. And with the foregoing which but poorly represent the reasons for this petition we would urgently request that the service on this route be increased to at least and the time reduced to 84 hours.

Very respectfully,

That is signed by a page and a half of petitioners. I

1879, April 16.

38113. Colo.

Petition for increase to three times a week and expedition to 84 hours.

[The paper just read was submitted to the clerk to be signed by him marked 3 L.]

The next is a petition indented by the witness, and

RAWLINS, WY

To the Hon. D. M. KEY,

Postmaster-Gen'l, Washington, D. C.:

SIR: We would very respectfully, but earnestly, call your attention to the necessity for an increase of service on route No. 38113, from White River to Rawlins, Wyoming Ter.

The service as now carried is only once a week, and in slow time inadequate to the wants of the vast community relying solely on this route for accommodations.

We would further call your attention to the increased stock and and rapid settlements of the country supplied by this route by a people who appreciate sufficient mail facilities, and to whom its wants is the greatest. We therefore earnestly request that service on this route be increased to (3) times a week, with the running time reduced to 84 hours.

Very respectfully,

This is indorsed as follows:

I respectfully recommend the increase of mail service as per the foregoing believing it to be to the people interested.

the next is another petition, as follows :

of Hon. D. M. KEY.

Postmaster-General :

: We would respectfully, but urgently, call your attention to the pressing need for an increase of service on route No. 38113, from White River, Col., to Rawlins, Wyoming Territory.

: service as now carried is only a week in slow time, and is wholly insufficient to properly supply the vast community relying solely on this route for its mail.

: country lying between the railroad and White River is being rapidly settled by a large class of people who know what it is to be provided with ample mail facilities, and whose mining and stock interest have grown to such vast proportion as to make additional mail accommodation an absolute necessity.

: therefore respectfully, but most urgently request that service on this route be increased to three trips a week, with the running time reduced to 84 hours.

Very respectfully,

indorsed in red ink on the back :

of April 16. 38113. Colo. Petition for increase and expedition.

The paper just read was marked by the clerk 5 L.]

The next is a jacket, and is as follows :

of May 1st, 1879. State, Colorado.

of route, 38113.

termini of route, White River and Rawlins.

length of route, 165 miles.

number of trips per week, one.

contractor, J. W. Dorsey.

cost, \$1,700 per annum.

Conditions inclosed, numerously signed, asking for two additional weekly trips, together with expedition of schedule from 108 hours to 45 hours. The increase of service and expedition of schedule is recommended by Hon. H. M. Teller, U. S. S., H. J. B. Keiser, Hon. T. M. Patterson, of Colorado, and W. W. Corbett, of Wyoming Territory. John W. Hoyt, governor of Wyoming Territory, states : " Having carefully examined the ground on which the within petition and others accompanying it are based, I feel warranted in indorsing the application made and in urging them upon your honorable consideration of the Postmaster General." County officers of Carbon Co. recommend increase of service.

There are four offices on the route that would be benefited by the improved service including White River, which has no other mail supply, at which point an Indian Agency is located.

The contractor submits sworn statement in regard to number of men and animals required on present and proposed schedule :

trips	\$3,400 00 per annum
indition	8,600 25

Total increase.....	\$12,000 25
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That is in red ink. Across that is indorsed in blue pencil :

this—Brady.

Then following that in black ink :

1st. Increase service two trips per week from May 12th, 1879, and allow contractor \$3,400 per annum additional pay, being pro rata.

2nd. Reduce running time from 108 to 45 hours from May 12th, 1879, and allow contractor \$8,606.25 per annum additional pay, being pro rata.

BRADY.

The jacket just read was submitted to the clerk to be marked, and by him marked 6 L.]

Inclosed in that jacket is the following letter :

[J. B. Adams, clerk for Carbon County.]

OFFICE OF THE CLERK OF THE DISTRICT COURT.

SECOND JUDICIAL DISTRICT, WYOMING TERRITORY,

RAWLINS, WYO., Jan'y 20th, 1879.

D. M. KEY,

Postmaster-General, Washington, D. C. :

Will you allow us to respectfully call your attention to the fact that the mail

facilities on the route from here to White River, Col., are entirely inadequate to the necessities of the people who reside along said route. The country between here and White River is being rapidly settled up by a people the most of whom have come in from the East and have been accustomed to daily mails, and they are very seriously discommoded.

The commissioners of the county are encouraging the settlement of the county named by large outlays of money in building roads and bridges and doing all in their power for the accommodation of the people, and if you will cause increased service of the mails it will be more of an inducement than anything we can do or offer. Imagine, if you will, a great many stock-men entirely cut off from market quotations. People, men, women, and children with a mail but once in seven days to warn them of Indian outbreaks, &c., &c. All things considered, we think, and it is the unanimous opinion of our people, that the mail service should be increased as soon as possible.

We would therefore ask that investigate, and if you find our statement of the matter be true, cause increased service at your earliest possible convenience, and by so doing you will greatly accommodate and favor many people.

Respectfully,

J. B. ADAMS,
County Clerk.
G. C. SMITH,
Pros. Attorney.
J. G. RANKIN,
Sherif.
M. E. HOKES,
Judge of Probate.
J. C. FRENCK,
Member Ter. Council.
LAWRENCE HAYS,
Member Ter. Council.

Indorsed in red ink on the back, as follows:

1879, April 16th.

38113, Colo.

Petition for increase of service and expedition of service.

Indorsed on the back of that is the following:

Having carefully examined the grounds on which the within petition and others accompanying it are based, I feel warranted in indorsing the applications made, and in urging them upon the favorable consideration of the Postmaster-General.

JOHN W. HOYT,
Governor of Wyoming.

[The paper just read was submitted to the clerk to be marked, and was by him marked 7 L.]

Inclosed in the same jacket, and stated to be in Mr. Turner's handwriting, is a sheet of figures.

[The sheet of figures just referred to was submitted to the clerk to be marked, and was by him marked 8 L.]

I ask your honor to look at the petitions. [Submitting papers to the court.] [To the jury.] Here is the jacket, gentlemen, and I ask you to look at the "45 hours" there.

Q. [Resuming and submitting a paper to witness.] Please look at this paper and state if you have ever seen that?—A. That is signed by me. There is something there that was not there when I signed it.

Mr. BLISS. I will prove that directly.

Q. I hand you a paper headed United States Senate Chamber, March 7th, 1879, and ask you whether you ever saw that?—A. Yes, sir; this came to me with that paper [indicating paper in the hands of Mr. Bliss] from Mr. M. C. Rerdell.

Q. You stated that in the first paper I showed you there was something that was not there when you signed it. What is it?—A. The amount of animals here was not filled out. That was blank.

Q. Now let me read it:

M. THOMAS J. BRADY,
Second Asst P. M. General :

SIR : The number of men and animals necessary to carry the mails on route 38113 from White River to Rawlins, one times a week is three men and six animals.

Were there any of those words there ?—A. No ; those were blank.
Q.

From White River to Rawlins one times a week—

The times was blank—

three men and six animals—

was blank men and blank animals. Is that so ?—**A.** Yes, sir.

Q. [Quoting:]

The number necessary to carry the same mail on a reduced schedule of 84 hours is ten and 24 animals.

Was that there ?—A. The number of men and animals was not there.

Q. It was blank men and blank animals ?—**A.** Yes, sir.

Q. Then it is signed—

Respectfully,

CHARLES F. PERKINS,
Subcontractor.

Sworn and subscribed to before me this 26th day of March, 1879.

GEORGE C. SMITH,
Notary Public, Carbon Co., W. T.

You swore to it before Mr. Smith, did you ?—A. Yes, sir.

Mr. BLISS. It is indorsed on the back—

1879, April 16. 38113. Colo.

Sworn statement of subcontractor as to number of men and animals required to perform service three times a week on schedule of 84 hours.

Q. After you signed and swore to it, what did you do with it ?—**A.** I believe I sent it to Mr. Rerdell.

The paper referred to was submitted to the clerk to be marked, and was by him marked 9 L.]

Mr. BLISS. The letter in which that oath is said to have been indorsed is as follows :

UNITED STATES SENATE CHAMBER,
Washington, M'ch, 7, 1879.

[Exhibit B, in blue pencil.]

F. PERKINS, Esq :

MR SIR : Inclosed please find statement to be made to the department in order to increase of service on § 38113.

Please sign it just as it is, and acknowledge it before a notary public or county clerk. Attend to this at once, as it is necessary before the increase of service is ordered.

Very truly,

J. W. DORSEY,
By M. C. RERDELL.

Address as before, lock-box 714.

There is written across that in blue pencil "Exhibit B," which has been put on since it came into my possession.

The COURT. You say that is headed United States Senate Chamber ?

Mr. BLISS. Yes, sir ; it is written on United States Senate paper.

The letter just read was submitted to the clerk to be marked, and was by him marked 10 L.]

From the same jacket there is also the following letter :

WASHINGTON, D. C., April 14th, 1879.

Hon. T. J. BRADY,
Second Asst P. M. General:

SIR: I beg to transmit herewith my proposition to carry the mail on route 35113, from White River to Rawlins, on an expedited schedule. This route is an important one, but very difficult to carry for a large portion of the year, and over which a large amount of mail is now carried.

Very respectfully,

JOHN W. DORSEY.

[The letter just read was submitted to the clerk to be marked, and was by him marked 11 L. The papers 9, 10, 11 L were submitted to the jury for inspection.]

For the purpose of completing the contents of that jacket, I will put in the following letter:

WASHINGTON, April 26th, 1879.

Hon. T. J. BRADY,
Second Asst P. M. G.:

SIR: In sending my sworn statement respecting the requirements of men and animals on route 35113, I beg to say that the reduction of the time to fifty hours from the present slow schedule will make the service expensive and difficult to perform, and I do not believe that I have put the number of men and animals necessary to run it satisfactorily to the people and the Government as high as I ought to have put them.

Yours truly,

J. W. DORSEY.

[The letter just read was submitted to the clerk to be marked, and was by him marked 12 L.]

Accompanying that is the following:

Hon. THOS. J. BRADY,
Second Asst P. M. Gen'l:

SIR: The number of men and animals necessary to carry the mail on route 35113 on the present schedule and three trips a week, is four men and 12 animals. The number necessary on a schedule of forty-five hours and three times a week is eleven men and thirty-two animals.

Respectfully,

JOHN W. DORSEY.

CITY OF WASHINGTON,
County of Washington:

John W. Dorsey, being duly sworn, deposes and says that the above statement is true, as he verily believes.

Sworn and subscribed to before me this 26th day of April, 1879.

W. F. KELLOGG,
Notary Public.

[The paper just read was submitted to the clerk to be marked, and was by him marked 13 L.]

Mr. MERRICK. We will show your honor that the expedition was allowed, and the allowance was made on the basis of the last oath.

Mr. WILSON. We will show your honor how this thing is before we get through with it.

Mr. MERRICK. Was it not made on the last one?

Mr. WILSON. I am not on the witness stand now.

By Mr. BLISS:

Q. [Resuming.] After you swore to and returned to Mr. Rerdell that paper, did you continue to carry the mail?—A. Yes, sir.

Q. How many times a week?—A. Well, it was ordered on the 12th of May.

Q. How many times a week then?—A. It was ordered on three times.

Q. Was there any change in the time?—A. I got a telegram to start the mail in fifty hours on the 12th of May, but I didn't start it until the 17th of May, nor I didn't start it on fifty hours either.

Q. But you started it three times a week?—A. I did on the 17th day of May, 1879.

Q. Why did you not start it on fifty hours?—A. Because I had no contract to do that.

Q. After that time, how did you run it?—A. I run it on eighty-four hours' time—eighty-four or ninety hours; somewhere along there.

Q. For how long a time?—A. Oh, for about a month.

Q. What happened, then?—A. Rerdell wrote to me if I didn't carry it in forty-five consecutive hours, or forty-five hours, I would be fined and my fine would amount to more than my pay.

Q. What then?—A. As soon as I found out that I would be fined I started it on forty-five hours, so as to get a little something out of it. I didn't want to get fined if I could help it. I had got into it, and, of course, I wanted to get out of it the best I could then.

Q. How long did you run it then?—A. I believe I run it to the 15th or 16th day of August, 1879.

Q. What happened then?—A. I throwed it down. I wouldn't run it no longer.

Q. Why not?—A. I throwed it down before cancelling my subcontract. I had written to them previous to this for more money on the forty-five hours' schedule. They wouldn't give me no satisfaction; so I wrote to them that I would relinquish the service July 1 if they didn't pay me more money, and they sent a man out to try to make a deal with me, and they didnt want to pay me any more, so they finally got my subcontract canceled in the Post-Office Department, and I got notification from the Post-Office Department that my subcontract was canceled, and then of course I had to throw it up. I still continued to carry it until the 16th of August, because there was nobody else there to carry it. That was the reason. I carried it after that.

Q. I was going to ask you did you at any time after that have anything to do with carrying the mail?—A. I throwed the mail down, and Mr. Eugene Taylor took it then. He came to me and wanted me to go in with him and help to carry it, and we went into partnership and carried it about a month, I guess, or a half a month.

Q. Then what happened?—A. I guess they made a bargain with somebody else then.

Q. Who took it then?—A. They made a bargain with a couple of men.

Q. Who were they?—A. I think that there was a man named Humphrey, and a man named Lambert, and a man named Lisco, I think. I think one of them had one end of the route and the others the other.

Q. Then, did you have anything to do with it at any time after that?—A. Yes, sir; I did.

Q. When was that?—A. They run it a little and then the Ute war broke out and they busted up, and we got it again on temporary service.

Q. Who do mean by we?—A. Me and Mr. Eugene Taylor.

Q. How long did you run it then?—A. We ran it then until the latter part of December, 1879.

Q. Eighteen hundred and seventy-nine or 1880?—A. Eighteen hundred and seventy-nine. I think that was the year.

Q. Who took it then?—A. I understood the subcontract was let to Foot & Dalton.

Q. From whom?—From the postmaster at Rawlins.

Q. Are you running it still?—A. Yes, sir; running service to-day.

Q. How long have you been running it on this last porary service?—A. Pretty near four months.

Q. [Submitting a paper to the witness.] Have you e ter?—A. [After examining the same.] Yes, sir; I hav

Q. Where did you first see it?—A. That letter was gene Taylor, in care of J. C. Davis, Rawlins, Wyom delivered to me. He was my agent for the stage li route.

Q. Mr. J. C. Davis?—A. Yes, sir; he done my busi Wyoming, at that time.

Q. [Submitting another paper to witness.] Please k —A. [After examining the same.] Yes, sir; that was Mr. Davis also, at Rawlins, Wyoming, as being a lett Rerdell.

Q. And delivered to you?—A. Yes, sir.

[The papers just indentified by the witness were s counsel for the defense for inspection.]

Mr. BLISS. I do not propose to offer them now. I s you shall be able to cross-examine the witness with re I have had them marked for identification, so that y amine upon them if you desire. While you are lookin go on.

Q. [Resuming.] What is the distance from Rawlins

The WITNESS. The distance now, do you mean?

Mr. BLISS. Yes.

A. I think the Government calls it one hundred a one hundred forty-six miles—the Government survey. be further than that. But when the route was adve

tion.] I had five stopping places besides each end; I think, four five.

Q. How many carriers and horses did you use when you were running once a week on a schedule of one hundred and eight hours?—A. Well, we have to keep extra horses. That is a hard road in winter.

Q. I want you to tell me how many you actually used and how many extra you kept?—A. Well, it took two carriers—I count a man in superintend the road—to run the mail. That would make three, with the man that looked after it. I had to do that.

Q. That is, two carriers and yourself then?—A. Yes, sir; two men and all the carriers there was.

Q. And yourself as superintendent?—A. Yes, sir.

Q. Then how many horses did you have?—A. When I first started the mail I didn't have as many horses as it requires now.

Q. I am talking about when you were running one trip a week in '8?—A. Well, it would need, I think, about six horses when I first started it in the summer. But I had to have more you know in the winter. I had to have two or three extras.

Q. Down to April 1879, when you were running at one trip a week—I spoke about there being two men and six horses in 1878. Now, during the winter of 1879, before May, 1879, how many carriers were used.

The WITNESS. That was when it was a weekly mail?

Mr. BLISS. Yes.

A. I used two men. Two men was all I used besides myself.

Q. How many horses?—A. In the winter time we would use from sixteen. The snow was pretty bad sometimes.

Q. Then after the trips were increased, in May, 1879, to three, how many men and horses did you use for three trips a week?

The WITNESS. On the present schedule?

Mr. BLISS. You did not run on the present schedule.

The WITNESS. I did after the first month I started it up.

Q. Well, how many did you use on a schedule of forty-five hours after May, 1879?—A. Somewhere about twenty odd head.

Q. What do you mean by twenty odd?—A. I don't know; I couldn't exactly tell you the number.

Q. You cannot tell whether it means twenty-one or twenty-nine?—A. In carrying that mail the horses get lame sometimes, so I had to keep extra horses.

Q. About how many did you have to use and keep to supply horses that broke down?

The WITNESS. On a hundred and eight hours' schedule?

Mr. BLISS. No; a forty-five hours' schedule, three times a week.

A. I am running now thirty-five head of horses. That is what I have to keep to run that line winter and summer.

Q. You are running it on a forty-five hour schedule?—A. Yes, sir; in.

Q. At that time was the mail larger or smaller than now?—A. It isn't amount to much. I didn't have to use so many horses.

Q. How many did you have to use?—A. They cut off my place, you, eighty odd miles to White River. We carried the mail then with one horse where it now requires two. The mail is heavier now. Then one man could ride and carry the mail, while now you have to use a buck-board or pack-horses to carry the mail. I think it would knock off six or eight horses.

Q. From your present number?—A. Yes, sir; take it the whole year around.

Q. You now use thirty-five?—A. Thirty-five is what I keep to do the business the whole year around, summer and winter. I don't need thirty-five in the summer, but I have extras, and I use them for something else, and then in the winter they come in play, and I have got to have them there. I run the mail through. I don't *try* to run it, I put it *through*.

Q. In the summer of 1879 you used six or eight horses less than you do now because the mail was smaller?—A. Yes, sir; we only used one horse half the distance. On the south end the mail was lighter.

Q. Have you ever run it seven trips a week?—A. I have. I started on seven trips a week.

Q. On what time?—A. Forty-five hours' schedule.

Q. How many carriers and horses did you use on seven trips a week?—A. On seven trips a week I had about seventeen stock tenders and drivers, and then I had to keep an extra man or two. It would take about nineteen or twenty men and from fifty-four to sixty head of horses, counting the whole year around.

Q. That covers your winter supply and your summer supply?—A. Yes, sir; that is to put the mail through. I could run it in less than that. I could half run it; but then I put the mail through when I run it.

Q. Was the route ever run three times a week on a schedule of one hundred and eight hours?—A. Yes, sir; it was.

Q. How long?—A. I believe Mr. Boone ran it that way last winter—I think on about one hundred and eight hours. I think probably he run it in about four days; made it in about ninety-six hours.

Q. How many men and horses did it take to run it three times a week in one hundred and eight hours?—A. It would take considerably less. It wouldn't take over twenty horses.

Q. And how many men?—A. I don't hardly know. I haven't been running it that way.

Q. Give us your best judgment about it.—A. I could run it a good deal cheaper in the summer, because in the winter I had to have more stations.

Q. Give us your best judgment about the number of men and horses.—A. Twenty horses and ten men.

Q. Does the twenty horses include any extras?—A. Yes, sir. I think I can run it with twenty horses.

Q. Summer and winter?—A. Yes, sir. I didn't run it that way. I couldn't tell you exactly.

Mr. BLISS. You did not actually run it, I understand.

[The two last letters identified by the witness were submitted to the clerk to be marked, and were by him marked "W. E. W., I."]

Mr. TOTTEN. I suppose that the court has observed that all of these matters which are complained about here occurred long before the time of this conspiracy?

The COURT. Oh, yes.

Mr. TOTTEN. I want the benefit of the exception that we have claimed all along.

By Mr. BLISS:

Q. [Resuming and submitting a paper to witness.] Please look at this letter and see if you received that?—A. [After examining the same.] Yes, sir; I received it.

Mr. Bliss. [Submitting a paper to Mr. Wilson.] There is one letter I would like to offer before you take the witness up.

[The paper was inspected by Mr. Wilson and returned to Mr. Bliss.] The letter is as follows:

WASHINGTON, *April 15, 1879.*

C. F. PERKINS, Esq.:

DEAR SIR: Hereafter all communications should be addressed to M. C. Rerdell, box 706, Washington, D. C.

Yours, &c.,

JOHN W. DORSEY.

[The paper just read was submitted to the clerk to be marked, and was by him marked 14 L.]

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Do you know Mr. Eugene Taylor?—A. Yes, sir; I do.

Q. Do you know where he is?—A. I believe he is here.

Q. He is still in the city?—A. He was in the court-room when I came in this morning.

Q. You know his handwriting, do you?—A. Yes, sir; I do.

Q. Now, Mr. Perkins, you commenced carrying that mail first in 1878, did you?—A. No, sir; I commenced in 1876.

Q. How many times a week did you carry it in 1876?—A. When I first started it from Rawlins to Dixon there was a weekly mail, and the balance of it was monthly.

Q. [Submitting Post-Office map of 1879 to witness and indicating.] This is Dixon. Now Rawlins is up here in Wyoming. How far is it from Rawlins?—A. Seventy miles.

Mr. WILSON. If the jury can see, that point right there is Dixon. [Indicating]. Now, Rawlins is on the Union Pacific Railroad, seventy miles north of that, which is not shown on this map.

Q. [Indicating.] Then, here is White River and that is Windsor?—A. Yes, sir.

Q. That is the route?—A. Yes, sir.

Q. Now, when you commenced running this in 1876, how many times a week were you carrying it?—A. I carried it once a week as far as Dixon, and monthly from there to White River, but it was soon made weekly clear through.

Q. At that time how many men and horses were required to carry it summer and winter?

The WITNESS. When I run it once a month there?

Mr. WILSON. No, I will ask it from the time you began to make it weekly.

A. I used two men, and I think some six to ten horses. We used more in the winter than we did in the summer, because the snow was very bad, and we had to have extras.

Q. To put the mail through?—A. I put it through, you bet,

Q. I am talking now about what a man could do if he would start his horses and not throw down his contract?—A. Some of them do that.

Q. I know, a good many do that out in that country?—A. As Boone did last winter on that route.

Q. I do not care who did it. I do not know what there is between you and Boone, but I am talking about a man who goes to work to per-

form the service and performs it during the summer and winter?—A. If I take the mail I estimate the horses it takes for a whole year. That is the only way you can estimate it.

Q. That is right. Now, then, you say to carry it one time a week would require two men and six horses?—A. From six to ten. You have got to have some extras.

Q. Then a statement to carry it one time a week that it would require three men and six animals would not be a very extravagant estimate, would it?—A. I did not make that statement.

Mr. WILSON. I know you did not.

Mr. BLISS. You have not asked him how many hours.

By Mr. WILSON:

Q. [Resuming.] Well, how many hours were you carrying it then?—

A. I was carrying it in one hundred and eighteen hours. I had from Monday morning at 7 until Saturday at 6 to get through each way.

Q. Now, reduce it to one hundred and eight hours?—A. That wouldn't make any difference, it is so little.

Q. Then an affidavit that set forth that it would take three men and sixteen animals is not very far out of the way, is it?—A. I guess not. Three men, counting a man to superintend the road, is the way I count it.

Q. That is the way any honest contractor has to count it in order to carry the mail, is it not?—A. Yes; to have somebody to look after his business. If he don't, he can't run it.

Q. Now, if you would reduce that schedule to eighty-four hours, about how many men and how many animals would it take?—A. About the same. I figured it that way. I didn't figure it any more because I had daylight to run, and I thought I could do it for just about the same.

Q. With three men and six animals?—A. Yes. I could do it just about the same as I could do it on one hundred and eight hours, because it gave me all daylight to do it in, and my drivers would be about the same on that route.

Mr. BLISS. How many trips are you speaking of now, Mr. Wilson?

Mr. WILSON. I am speaking about a schedule eighty-four hours one time a week.

The COURT. Yes; he says the reduction from one hundred and eighteen to eighty-four hours would not make any difference, because he would have daylight to travel in on each end.

The WITNESS. And it didn't make the travel so much faster but what I could make it.

By Mr. WILSON:

Q. How did you get your forage in there?—A. I put it in.

Q. You had to make provision for that in the summer season?—A. Yes, sir; we had to make provision for that in the summer, or we would get left in the winter.

Q. What did you do for grain in the winter season?—A. Hauled it in there.

Q. Hauled it in in the summer season or in the winter?—A. You haul it whenever you can.

Q. That requires some additional force?—A. In the summer time we don't use much grain for horses. We turn them out.

Q. In the winter time how is it?—A. Then you have to use it.

Q. When you increased it to three trips a week, how many men and animals would it take on one-hundred-and-eight-hour schedule once a week? If you were carrying it one trip and you increased it to three

trips, how many men and animals would it take on one-hundred-and-eight-hour schedule?—A. It would take about twenty horses I guess.

Q. How many men would it take?—A. It would take four drivers besides stock-tenders. I didn't run it that way, and I couldn't tell.

Q. When you reduce it to forty-five hours' time, and carry it three times a week, how many men do you say it would take?—A. I am using four drivers, eight stock-tenders, and thirty-five head of stock on the forty-five-hour schedule, and I have to run night and day.

Q. Three times a week?—A. Three times a week.

Q. Then eleven men and thirty-two animals is rather too low, isn't it?—A. Eleven men is plenty.

Q. But thirty-two animals is not enough?—A. You can estimate it all the way from twenty-five to thirty-five animals, taking the winter and summer. You have got to have some extras.

Q. Then when a man makes an affidavit that on a schedule of forty-five hours, three times a week, it would require eleven men and thirty-two animals he is not very far from being right, is he?—A. On a forty-five hours' schedule he is not very far from being right.

Q. Exactly. Now, this matter of getting at the number of men and animals necessary to carry the mail, running through a period of four years is a matter with reference to which men would differ if they were going to make estimates?—A. I don't think there are any two men who would run a mail line alike.

Q. And there are hardly any two men who would calculate a mail line alike?—A. Yes, sir; and there aint two men that run it alike. Some of them run it in the ground. Mr. Boone run it that way last winter.

Q. You are a man who has had much experience in this matter, and I do not suppose there has one of these jurors ever carried a mail in his life, and they want to get some information on this matter and the horses and men figured here seem to be large. Now, I want you to say to the jury whether in making an estimate of the number of men and horses necessary to carry a mail on a line different contractors would not vary as to the number of men and animals it would take to carry the mail, taking it through the summer and winter for four years?—A. Circumstances change. The mail may be in such a way that you can't carry it with less men or you may need more. On that contract when I first started I could carry it with less men. I could carry it with one horse—just put my sack on and go. Now, I need two horses. The mail weighed then from twenty to thirty pounds, and it would weigh now from fifty to one hundred and fifty, and sometimes two hundred pounds.

Q. You have to take those things into account in making your calculations?—A. You have to use horses according to the size of your mail and also the way you run.

Q. You have to take into consideration also the question as to whether or not the mail is going to grow in weight?—A. If I was going to start on a four year's contract I wouldn't have needed so many horses then as now, because the mail was not so heavy.

Q. Do you not have to take into consideration whether or not the country through which the mail is carried is going to increase in population and the mails going to increase?—A. You can figure on that certainly.

Q. You do have to take it into consideration?—A. When I first took that contract I didn't take into consideration that it was going to be as

large as it is now. At that time there were only nine men to be supplied and now there are four companies of soldiers.

Q. I wish to know whether this matter of making an estimate of the number of men and animals necessary to carry the mail on a route is one with reference to which different persons would have different opinions, and as to which they would make their calculations from different considerations?—A. Think the right way to make the calculation is for them to go and find out how many men and horses it will take and then calculate on that.

Q. How are they to tell that?—A. By going and putting them on and trying it. A man must do it, and the contractor ought to go and see.

Q. Suppose he cannot go and see?—A. Then send his agent.

Q. If you were to send out two different men, would not those men give different opinions?—A. They could tell after they run it awhile.

Q. You can answer my question, can you not?—A. Yes, sir.

Q. Will you please to do it?—A. Yes, sir.

Q. Is not that a matter with reference to which persons in that business differ very greatly?—A. I suppose so; yes, sir.

Q. And if two men were looking at the same route, one man would conclude that he could run it with a certain number of horses and men, and the other man would differ as to the number, would he not?—A. I have no doubt that he would.

Q. Is not that a very common thing?—A. As I have told you before, there was several men on our route there, and they did not use the same amount of stock and men. Some of them thought they could get along with less men and horses, and others more. Some of them ran it into the ground. When I ran the mail, the mail went through, and I told you exactly the number of men and horses it took to run that mail, and I can show by the Post-Office Department that my mails went through. That is all I can say.

Q. I am not disputing whether you ran this mail through or not.—A. I am just telling you how I ran it.

Q. I am not asking you about that, and I do not care how you ran it. That is not the point. If you will just pay attention we will get along.

The WITNESS. You asked me a question on the same subject three or four times, and I thought I was answering it.

Mr. WILSON. No; you have not answered it.

The WITNESS. Excuse me, then.

Q. This mail has increased very much in size since the time you first began to carry it, has it not?—A. It has since 1879. Before that it was about the same.

Q. This mail has increased very greatly, you say, since the Ute war?—A. It has increased some since the Ute war.

Q. That Ute war broke out during this contract period, did it not?—A. Yes, sir.

Q. The number of men and animals that was necessary to carry it before the Ute war would have been wholly inadequate to carry it since that time, would it not?—A. We did not need so many horses before the Ute war, because the mail was light.

Q. I say the number of men and animals at that time would have been wholly inadequate to the period since the Ute war.—A. Yes, sir.

Q. Then a man who was going to provide himself with horses and men to carry a mail for four years must take into consideration the growth of the mail, must he not?—A. Certainly he has got to take that into consideration, and he has got to take into consideration other things.

Q. What other things?—**A.** The difference in time, so that if you run it in faster time he has got to take that into consideration, and also he has got to take into consideration the country through which he was running that mail. He might be situated so that he could not run it. Where there is no travel in a country like this route you might not be able to carry it with much less time.

Q. If the mail route is projected through a region of country that is rapidly settling up, or has a prospect of settling up rapidly, he must take that into consideration also, must he not?

Mr. MERRICK. If your honor please, I call your attention to this course of examination.

The COURT. I think the witness has answered all those questions satisfactorily. The answers must be obvious. In regard to the contract running over four years there must be contingencies allowed for.

Mr. WILSON. That is the only point I wanted to make there.

The COURT. I understood the witness some time ago to answer that question.

Mr. MERRICK. There is only one definite thing, and that is how many it takes at the present minute. As to the future it is speculative.

The COURT. As to the number now required the oath ought to be positive. As to the number to be required in the future it can only be a matter of opinion.

Mr. MERRICK. A matter of opinion; that is about all.

Mr. WILSON. That is what we say.

Mr. HENKLE. That is all the affidavit is.

Q. You have had a pretty large experience it seems with this route. In July, 1878, you said you had a contract for temporary service?—**A.** No, sir.

Q. When did you make your first contract for temporary service?—**A.** Me and Eugene Taylor took it I think, from July to August.

Q. Of what year?—**A.** Eighteen hundred and seventy-nine, I think.

Q. I understood you to say that you began in November with Eugene Taylor carrying the mail on temporary contract and continued it until January, 1879?—**A.** We had it six or seven different times. You have got it mixed up. I think the first time we took the mail on that route under the temporary contract was in July, 1879.

Q. And you carried it until when?—**A.** We carried it probably for three weeks or a month.

Q. With whom did you make that temporary contract?—**A.** The postmaster at White River.

Q. After that temporary contract had ceased, you made a subcontract with Dorsey by Rerdell?—**A.** Previous to this.

Mr. WILSON. Either you are getting it mixed or else I am.

The WITNESS. I am not.

Q. Let us get this thing just as it was. Commence now in July, 1878, and tell me what your first service was on that route.

The WITNESS. When I started the route first under Dorsey?

Mr. WILSON. Under the contract of July, 1878.

A. I made a contract with Mr. Rerdell, Dorsey's agent in Rawlins, I think, on the 16th or 17th of January, 1879, to carry the mail for four years. I carried it then until it was made tri-weekly, the 12th or 13th of May next, and then we had a dispute over the pay and I threw it up and then it went under temporary service with Mr. Eugene Taylor. He went to the postmaster and took it under temporary contract and run it until July 16th, I think.

Q. Now, let us get it straight. First, you took a subcontract from Mr. John W. Dorsey, Rerdell being his agent?—A. Yes, sir.

Q. And you carried the mail under that contract?—A. We had carried it previous to that.

Q. We will let that go. You carried it under that subcontract until they made it three times a week?—A. Yes, sir.

Q. Then you carried it a short time under the three times a week service?—A. Yes, sir.

Q. And you and the contractor, or Mr. Rerdell, disputed about what your compensation should be, and you threw up the service?—A. I threw up the service, because he would not pay me at the rate of the worth of the extra work I was doing.

Q. What was the extra service you were doing?—A. Running a mail on a shorter schedule than what I agreed to do.

Q. The schedule time when it was made three times a week was reduced?—A. It was reduced to forty-five hours.

Q. Did you put it through in forty-five hours?—A. I did not start it on that time; but subsequently I did put it through. I first started on about eighty hours or eighty-four.

Q. You and Mr. Rerdell quarreled about what your compensation should be?—A. I found out that he would not pay me any more, and I threw it up, or rather the contract office took it away from me. It is all the same thing. I told them I threw it up, and they didn't say any more.

Q. Did you give notice that you would throw up the contract at a certain time?—A. I gave notice of the conditions at which I would run it on forty-five yours. I would not run it for the money I got on the advertised schedule of time.

Q. Did you notify the department that at a certain time you were going to abandon the contract?—A. I did, if there was not any more money paid. I think that was the condition in my letter.

Mr. WILSON. [To Mr. Bliss.] Can you give me that letter?

The COURT. [To Mr. Wilson.] Can you not shorten your route a little on this examination?

Mr. WILSON. If I knew what part of these papers they were going to put in I could. I would stop right now with the privilege of recalling the witness when other papers that I know are in the case are put in.

The COURT. You are not bound to cross-examine except what is already in.

Mr. WILSON. But he has talked about Humphrey and Lambert, and this temporary service, and the contract with Fulton Dalton. They have talked about all this, and I know those papers are in the case.

The COURT. Those papers are outside of this controversy.

Mr. WILSON. I think they are. I would not ask him a word about it if I supposed that these other papers were to cut no figure in the case; but if they do, I shall have to call him back.

The COURT. I do not see what his dispute with Rerdell has to do with this matter.

Mr. WILSON. I will simply state to your honor that I happen to know there was a long controversy between the subcontractor and the contractor in regard to his pay.

The COURT. What in the name of sense has that to do with this case?

Mr. WILSON. I do not think it had anything to do with this case. I

o think a great many other things already introduced have nothing do with it.

Mr. BLISS. [To Mr. WILSON.] You mentioned a letter. If you will kind enough to tell me what it is, I will try and find it.

Mr. WILSON. The letter of Mr. Perkins in which he gave notice that was going to throw up his contract, and subsequently there was a g controversy between them.

The COURT. The amount of it is just this: That forty-five hours was her a short schedule of time, and Perkins would not render that serv- for the pay for which he was willing to render it in eighty-four irs. Now any man can see that, without Perkins's testimony.

Mr. WILSON. There is a great deal more to it than that.

The COURT. I do not know. These things that are not seen are mat- s of faith; not testimony.

Mr. WILSON. I will suspend this examination, and if it becomes ma- ial I shall have to recall the witness.

Mr. BLISS. I think you must have got the matter mixed up about the ter. You are probably thinking of a letter from your client, and not etter from him.

Mr. WILSON. Oh, no.

Q. [Submitting a letter.] Is that Mr. Eugene Taylor's handwriting?

A. Yes, sir.

The letter was marked for identification by the clerk W. E. W.. I.]

Mr. WILSON. I will not cross-examine this witness any further; but lo not want him to go away.

By Mr. BLISS:

Q. Has that country there been settled up since 1878?—A. Yes, sir; ne.

Q. The population has increased considerably?—A. Yes, sir; there s been some increase. There has been a military post at White ver since the war broke out and some stock men, &c.

Mr. MERRICK. They proved a paper to be in Mr. Taylor's handwrit- g. Before the witness goes off the stand I want to ask him about at signature.

Mr. INGERSOLL. We do not propose to show it to you, because we not expect to use it now. If we do use it we will show it to you.

Mr. MERRICK. I want to examine the witness as to the signature.

Mr. WILSON. We decline to show it.

The COURT. They do not offer it in evidence.

Mr. WILSON. There will be no controversy about it.

Mr. MERRICK. There is controversy about it. When they prove a gnature, I would like to cross-examine the witness.

The COURT. It cannot be admitted in evidence unless they show it you. They say they do not propose to use the paper.

Mr. MERRICK. Oh, they do not propose to use the paper.

The COURT. They cannot use it unless you have the chance to cross- amine him as to the signature.

Mr. MERRICK. But the witness is going to leave the city.

The COURT. That will be their loss. [To the witness.] You can go.

EUGENE TAYLOR sworn and examined.

By Mr. BLISS:

Question. Where do you reside?—Answer. White River, Colorado.

Q. How long have you lived there?—A. Most of the time since 1875.

Q. When after that?—A. In November, I think, 1877.

Q. Under a contract or arrangement with whom?—A. Under at White River.

Q. How long did you carry it?—A. Nearly two months right.

Q. How many trips?—A. One trip a week.

Q. On what time?—A. One hundred and eight hours required.

Q. After that time was the number of trips increased?—A. Not under that temporary service.

Q. Without going into the details, if you at any time it was running at three trips a week, please state it.—A. Perkins to carry it.

Q. When was that?—A. That was under the subcontract had with John W. Dorsey.

Q. Do you know when?—A. From January, 1879, until it was canceled.

Q. Three trips a week, commencing in January, 1879, until a week.

Q. When did three trips commence?—A. They commenced Mr. TOTTEN. May, 1879.

The WITNESS. Yes.

Q. On what schedule of time?—A. We first started on a forty-five-hour schedule, I think, and then it was expedited to a forty-hour schedule.

Q. And you carried it how long on a forty-five-hour schedule?—A. Until the contract was canceled. I don't recollect the date.

Q. Was it one month or ten months?—A. It was less than one month, I think.

Q. That was a temporary service?—A. No; it was a permanent service.

Q. That was canceled by the Post-Office Department?—A. I think it was.

Q. With whom was the subcontract?—A. With John W. Dorsey's agent.

Q. [Submitting a paper.] Please look at that paper. Is that the contract referred to?

[The witness examined the paper and did not reply.]

The COURT. Can't you tell, Mr. Taylor?

Mr. BLISS. You can tell whether that is your signature?—A. That the contract.

Q. Signed by you?—A. Yes, sir.

Q. Where was that contract made?—A. It was made through my attorney in Washington.

Q. Made here?—A. Yes, sir; I presume it was.

Q. Where was it signed?—A. I signed it in Rawlins, Wyoming.

Mr. BLISS. I will offer it in evidence.

Mr. TOTTEN. What is the date?

Mr. BLISS. It is dated the 15th of October, 1880. It is between Eugene Taylor, principal, and W. B. Hugus and J. W. Hugus as sureties, reciting that Taylor has undertaken to carry the mail from the 15th of October, 1880, to June 30, 1882, inclusive, upon such schedule of time and for such additional number of trips as the Post-Office Department may direct, three times a week for \$10,000 per annum and six times a week for \$20,000 per annum; present schedule of time forty-five hours each way, which rate of speed shall not be increased under this contract. The party of the second part shall be entitled to a pro rata increase of pay at above-named rates for all increased service that may be ordered by the Post-Office Department. It is agreed that the fines and deductions shall be paid by the subcontractor, and that ninety days' notice shall be given by the second party of any intention to cease carrying service on this route, and a failure to give such notice shall work a forfeiture of pay that may be due to second party, and the sixth Auditor is hereby authorized and directed to retain such pay. This is signed by John W. Dorsey, by M. C. Rerdell, his attorney in fact, and Mr. Taylor, and certified by the postmaster at Rawlins on the 14th of October, 1880.

[The contract last read was marked by the clerk 15 L.]

In this connection I read the jacket identified by Mr. Sweeney, marked , describing the route, and dated October 20, 1880 :

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of, Eugene Taylor, whose post-office address is White River, Summit County, Colorado, for service on this route at \$10,000 per annum, and in case of increase of service to six times a week pay to be at the rate of \$20,000 per annum, subject to fines and deductions, from October 15, 1880, to June 30, 1882, has been filed in this office.

BRADY.

[The paper last read was marked by the clerk 16 L.]

Q. When you were carrying that mail, in 1878, what was the average weight of the mail?—A. It was probably about twenty pounds.

Q. Was the mail greater going from Rawlins to White River or from White River to Rawlins?—A. From Rawlins to White River.

Q. You took in more papers?—A. Yes, sir.

Q. When you were carrying it, in 1879, what was the weight of the mail?—A. Previous to the outbreak it was probably twenty or thirty pounds tri-weekly.

Q. And after the outbreak?—A. Anywhere from one hundred to three or four hundred pounds.

Q. That was when they had how many companies of soldiers in there?

A. They had at one time upwards of thirty companies.

Q. Any extra horses?—A. Yes, an additional team with that is, taking it all seasons of the year, the worst as well.

Q. Winter and summer?—A. Winter and summer.

Q. To carry it three trips a week on a schedule of forty
A. I should judge about thirty animals.

Q. And how many drivers?—A. I should have altogether men employed.

Q. How many of those would be drivers?—A. I should have drivers to be their own stock-tenders. Excuse me a moment to correct that. You ask me on the expedited route.

Mr. BLISS. Yes. Forty-five hours three times a week.

The WITNESS. It would take eleven men and about six to make a sure thing of it on a forty five-hour schedule three times a week.

Q. All the year round?—A. Yes, sir.

Q. Less in summer, I suppose?—A. Yes, sir.

Q. And more in winter?—A. Yes, sir.

Q. When you were carrying the mail who, if anybody, responded with in Washington in reference to carrying the mail?
With Mr. Lilly, my attorney.

Q. Did you have any correspondence with Mr. Rerdell representing the contractor?—A. I think I had a little correspondence with him.

Q. Do you remember receiving a letter in February, 1878?
sir.

Q. From whom?—A. From M. C. Rerdell.

Q. What did you do with that letter?—A. I put it in a box and sent it to J. B. Adams, at White River.

Q. Have you ever seen it since?—A. I have not.

Mr. TOTTEN. What was the date of the letter?

The WITNESS. I cannot tell the exact date.

Mr. WILSON. The question of Mr. Bliss was a leading one.

The COURT. Perhaps it might be objectionable; but he has answered the question.

Q. [Submitting two papers.] Please look at these papers and say if you have ever seen them, or either of them?—A. I have.

Q. Where did you see them?—A. In Rawlins, Wyoming.

Q. Do you know who wrote them?—A. G. C. Smith, I think.

Q. At whose request?—A. At mine.

Q. Did you circulate these petitions?—A. I circulated the one that was circulated at Rawlins.

Q. How came you to do that?—A. I did it at the request of Mr. Rerdell.

Q. Do you know when you circulated them?—A. It was about the last of February.

Q. Of what year?—A. Eighteen hundred and eighty-one.

Mr. BLISS. The papers I have shown the witness are the ones marked by Mr. Sweeney as 56 and 57.

Q. You say the one that is from Rawlins you circulated?—A. Yes, sir.

Q. What did you do with it after you circulated it?—A. I mailed it to Mr. Rerdell, as near as I can recollect.

Mr. BLISS. I will offer it:

the Hon. the SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., Contract Office:

SIR: We, the undersigned, citizens and residents of Rawlins, Wyoming, and other points on mail route No. 38113 from Rawlins, Wyoming, to Meeker, Colorado, [White River] respectfully but urgently petition and pray that the mail service on said route No. 38113 from Rawlins, Wyoming, to Meeker, Colorado, [White River] be increased from three times per week to seven times per week, and if practicable that the running time be reduced from the present schedule to thirty-six (36) hours, thereby accommodating the demands and important business interest of the country to, from, and through which the route runs and connects and allowing important correspondence to be answered by return trip from both ends of said route.

Signed by A. McCargan, special agent.

Mr. WILSON. What was he special agent of?

The WITNESS. He was connected with the Indian office in some manner. I don't know his title.

Mr. BLISS. Special Indian agent, I guess. It is also signed by J. C. Friend, editor, and two or three pages of other names.

[The paper last read was marked by the clerk 17 L.]

Q. Are these signers all parties living about Rawlins and vicinity?

A. As far as I know.

Mr. BLISS. The other is as follows:

the Hon. SECOND ASSISTANT POSTMASTER-GENERAL,
Contract Office, Washington, D. C.:

SIR: We, the undersigned, citizens and residents at and near Baggs' Crossing and Union post-offices, and who reside near mail route number 38113, and receive mail and accommodation from said route No. 38113, from Rawlins, Wyoming to Meeker, Colorado, respectfully but earnestly petition and pray that the mail service on said route number 38113 be increased from three times per week to seven times per week, and, if practicable, that the running time on said route be reduced from the present schedule to 36 hours, thereby accommodating the important business interests of the town and country to, from, and through which said route passes, and thus allowing answers to important mail matter to be sent by return trip from all points on said route, and thus they will ever pray.

Signed by Capt. J. F. Munson, U. S. A.; George B. Walker, lieutenant, U. S. A.; the postmaster at Baggs, and something over a page of others.

Mr. WILSON. What are the indorsements?

Mr. BLISS. It is indorsed in red ink:

March 5, 1881. 38113, Colorado. Petition for daily service and expedition of schedule. Captain J. F. Munson and others petition the Postmaster-General that the mail service on route 38113 be increased, and that the running time be reduced.

Approved and recommended.

W. T. SHERMAN, *General*.

Received A. G. O. March 3d, 1881. Headquarters of the Army, Washington, D. C., March 3d, 1881.

[The paper last read was marked by the clerk 18 L.]

Q. You did not have anything to do with the circulation of the last petition?—A. No, sir; I think, but I am not positive, that I sent it to Mr. Major, the trader at Baggs. It is a military camp.

Mr. BLISS. Those papers are inclosed in the following jacket:

Date, March 8, 1881. State, Colorado.

No. of route, 38113. Termini of route, Rawlins and Meeker.

Length of route, 165 miles. No. of trips per week, three.

Contractor, John W. Dorsey. Pay, \$13,706.25 per annum.

Subcontractor, Eugene Taylor. Pay, \$10,000 per annum.

Petitions inclosed signed by military officers stationed at Meeker and others asking that the schedule on this route be increased to daily, and that the running time be reduced from 45 to 36 hours. Gen. W. T. Sherman, U. S. A., recommends that the prayer of the petitioners be granted. Under date of May 1st, 1879, order issued to reduce the running time from 108 to 45 hours. There are three offices on this route. Service maintained principally for the supply of the military located at Meeker, the southern terminus of the route. Four additional trips will cost, at pro rata, \$18,275 per annum.

From April 1st, 1881, increase service to seven trips per week and allow contractor and subcontractor \$18,275 per annum additional pay, being pro rata, and allow subcontractor \$13,333 33 per annum additional pay, being pro rata.

BRADY.

[The paper last read was marked by the clerk 19 L.]

Mr. TOTTEN. There was no expedition in that order, was there?

Mr. BLISS. The order did not give expedition; no.

Mr. WILSON. Simply increased the trips.

Mr. BLISS. That is all.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. There is an Indian agency at White River is there not?—A. There was.

Q. There was up to the time of the Ute difficulty there?—A. Yes, sir.

Q. That is the place where the Meeker family lost their lives, I believe?—A. Yes, sir.

Q. How many troops were kept there up to the time of this outbreak?—A. None.

Q. There was simply the Indian agency there?—A. That was all.

Q. What time was that Ute outbreak, if you remember?—A. The 29th of September, 1879.

Q. That Ute outbreak interfered with the carrying of the mails, did it not?—A. I did for a few days.

Q. Was the stock killed and run away?—A. Not that I know of.

Q. Was the stock driven off the line?—A. By stock-tenders; it was driven off by them.

Do you recollect whether the postmaster at White River was
d?—A. He was.

And there was general demoralization?—A. Near White River;
sir.

For what distance along that line was the stock driven off?—A.
it sixty miles.

Do you know whether the Government had to establish a courier
to carry the mail during the time of that Indian trouble?—A. They
establish a line of couriers; I do not know for what purpose or
they did it; I do not know whether they felt obliged to do it or not.

They did establish a line of couriers?—A. They did establish a
of couriers.

When they established that line the mail was not being carried,
account of these Indian troubles, was it?—A. I don't think that the
iers carried any mails at all; they were dispatches.

You had a contract for temporary service there, I believe you said,
you made with the postmaster at White River.

the WITNESS. At what time?

r. WILSON. In 1879.

Yes, sir; I had two different ones.

What was the occasion of the postmaster at White River making
temporary contract with you the first time you carried it one trip
or your temporary contract?—A. That was in 1878.

You had a temporary contract in 1879. What was the occasion of
taking that contract?—A. I presume because the mail was not
ed. The postmaster sent word to me asking me to come and take
mail.

Do you know why it was not carried?—A. I do not.

You do not know anything about it?—A. Not the first temporary
ice I had.

You do not know why the mail was not carried?—A. Not at that
icular time.

Now, in order that there may be no misunderstanding between
let me repeat: You say the mail was not being carried and the
master at White River made a temporary contract with you to
y it. Now, I ask you if you know why the mail was not being car-
, and because of which you got that temporary contract?

the WITNESS. If you will state which one of those two parties that
d that temporary contract with, I will try and answer.

r. WILSON. I am talking about 1879.

the WITNESS. I had temporary service twice in 1879.

Take the first time in 1879 that you had a temporary contract?—
I say I don't know any reason why the mail failed then.

What time of the year was that?—A. That was in August, I
k.

How long did you carry it under that temporary contract?—A.
ut three weeks.

When did you next have a temporary contract?—A. In Novem-
and December, 1879.

What was the occasion of the mail not being carried then?—A.
not know that. I carried the mail.

Do you know the reason why the contractor was not carrying it?

I do not. I carried it myself, and I presume he could carry it as
as I could.

Who paid you for that carrying under your temporary contract
uly, 1879?—A. I did not have any temporary contract in July.

Mr. WILSON. Was there not a controversy between Rerdell about your pay on this route? You answer that will go a little further?—A. I don't recollect ever having a controversy with Mr. Rerdell.

Q. With whom did you have a controversy about it?—A. The department.

Q. What was your claim with the department?—A. For temporary service performed on that route.

Mr. BLISS. I am not going to object to this if it is proper. I do not see how it can have any bearing.

The COURT. I do not see myself.

Q. When this subcontract was thrown down, as the case is among you gentlemen, or when the subcontractor was to perform the service any longer, were you interested in the matter?

The WITNESS. At what time?

Mr. WILSON. In 1879-'80.

A. I had no subcontract of my own then.

Q. Were you interested with Mr. Perkins?—A. I was.

Q. Very well. When Mr. Perkins threw it down, of course he had an interest in it. He did throw it down, did he not?—A. I understand it, the department stopped the contract.

Q. What contract?—A. The subcontract.

Q. Your subcontract?—A. Mr. Perkins' subcontract.

Q. What cause did Mr. Perkins assign for throwing it down?—A. I don't know as to that. I never had the correspondence in the matter of record in the department, I suppose.

Q. When these contractors had made a new subcontract and threw it down, did this thing happen—that the new contractor would get the mail up at Rawlins and carry it down to Dixon when he got to Dixon the postmaster at Dixon would not give the mail to carry on to White River, but gave it to you?

Mr. WILSON. Can you answer a plain question ?

The WITNESS. What is your question ?

Q. You know what it is. Do you not know that that postmistress was a relative of Mr. Perkins ?—A. I have heard so.

Q. Do you not know it as a fact ?—A. I do not know it as an absolute fact. You have got Mr. Perkins here to answer.

The COURT. You may speak to reputations ; not pedigree.

Q. Do you not know that that is so, just about as well as you know your mother is your mother ?—A. No ; I do not, near as well.

Q. Not quite that well ?—A. No.

Q. Do you not know that when the contractors here had made their subcontract with these two persons who Mr. Perkins named, and those subcontractors went to work to carry that mail and would get it regularly at Rawlins and carry it as far as Dixon that there the postmistress would not let the carriers have the mail to go on down to White River, and you gentlemen would take it up there and carry it down to White River, and then get it on the pretense of this temporary contract and carry it back as far as Dixon, and then when the regular subcontractor would get the mail at Dixon to carry it back to Rawlins your drivers or your riders would ride right along by the side of them up to Rawlins, and then that you put in the claim here to the Post-Office Department for pay for performing that kind of service ?—A. I do not know anything of the kind because I carried the mail from Dixon to Rawlins myself, or my carriers did.

Q. That is all. I just want to know if you deny it ?—A. I will say that I carried the mail from Dixon to Rawlins.

Q. During this period I have been talking about ?—A. Yes, sir ; that is what I will say.

Q. And you swear now here that these subcontractors that had been employed by these contractors did not carry that mail ?—A. I am not saying anything about it.

Q. Do you not know that they did carry the mail between Dixon and Rawlins ?—A. They carried it from Rawlins to Dixon.

Q. And they did not take it back from Dixon to Rawlins ?—A. No, sir.

Q. Well, then, they carried it from Rawlins to Dixon, and your men rode alongside of them, and you put in a claim for that kind of service, did you not ?—A. I made a contract with the post-office at White River requiring me to perform the service.

Q. And you did put in a claim for that kind of thing ?—A. I did.

Q. When these contractors were doing their best to carry the mail, you were insisting upon a temporary contract made with the postmaster at White River, and were taking pay from the department ?—A. I was performing my contract as I made it, and I claimed my pay accordingly.

Q. How much did you get for it ?—A. I never recollect getting anything yet on that contract. From Dixon to White River I got paid.

Q. They paid you from Dixon to White River ?—A. They paid me a certain price for it ; not what I claimed.

Q. You put in an offer to carry it for \$10,000, did you not ?—A. Not on temporary service ; on permanent service.

Q. They allowed you more than the rate you put in an offer for ?—A. They did between White River and Dixon.

The COURT. I cannot really see the bearing of this evidence.

Mr. WILSON. I am through.

Mr. BLISS. I told your honor some time since that I did not see the bearing of it, but did not want to object to it.

Mr. TOTTEN. It probably has a tendency to establish a conspiracy, your honor.

By Mr. BLISS :

Q. I understand you made a contract with the postmaster at the head of the route ?—A. Yes, sir.

Q. For temporary service ?—A. Yes, sir.

Q. And this matter that Mr. Wilson has been questioning you about related to service performed under that contract ?—A. That is what I supposed he was questioning me about.

Q. You claimed that that contract was in force, and that it was your duty to carry the mail while somebody else was also carrying it ?—A. Yes, sir.

Q. Who were the other people ?—A. John Foote was the principal one, I think.

Q. Were you notified by the Post-Office Department that your temporary contract made by the postmaster at White River was ended ?—

A. Not directly. I received a notice from the postmaster at White River that he had been ordered by the department to stop the temporary service.

Q. That was your first notice, was it ?—A. Yes, sir.

Q. Did you then stop it ?—A. I did.

Mr. BLISS. That is all. But do not go away, as I shall probably have to recall you.

The COURT. Do you want any recess to-day, gentlemen ?

Mr. WILSON. Yes, sir; I am ready for it now.

Mr. BLISS. I do not care whether we have a recess or not. I would like to get rid of as many witnesses as I can before the 4th of July, so as to let them get away.

Mr. WILSON. I would like to have a recess.

The COURT. We will follow our usual custom and take a recess, but probably sit a little later than usual in the afternoon.

At this point (12 o'clock and 50 minutes p. m.) the court took its usual recess.

AFTER RECESS.

JOSEPH B. ADAMS sworn and examined.

By Mr. BLISS :

Question. Where do you reside ?—Answer. At Meeker, Colorado.

Q. What is your business ?—A. I am a post-trader at the military post there.

Q. How long have you resided there ?—A. I have been at that post about two years.

Q. Do you know Mr. Eugene Taylor ?—A. Yes, sir.

Q. Did he, at any time early in 1881, hand or send you by mail a letter purporting to be from some one in Washington ?—A. He did; in February, 1881.

Q. How did you receive it ?—A. By mail.

Q. From whom did it purport to be ?—A. M. C. Rerdell.

Q. What did you do with the letter ?—A. My impression is that I destroyed it.

Q. Did you, at one time, make search for it?—A. I did make diligent search for it.

Q. And you could not find it?—A. No, sir.

Q. Where did you last know of it?—A. The last time I ever saw the letter was when I was cleaning up some papers in my desk. I think it was probably a couple of months after its receipt, and I never have seen it since that time. I am satisfied I destroyed it with some other papers.

Q. When did you make search for it?—A. I made a careful search for it when Captain Stewart was out there. I cannot tell the month it was.

Q. What year?—A. Last fall.

Q. You could not find it?—A. No, sir; I could not find it.

Q. To the best of your judgment the letter is destroyed?—A. Yes, I guess there is no doubt about it; no doubt in my own mind, certainly.

Q. Do you remember the date of the letter?—A. My impression is that it was dated February 16.

Mr. WILSON. What year?

The WITNESS. Eighteen hundred and eighty-one. It might have been February 16. It was within very nearly that date.

Q. [Resuming.] What did the letter say?—A. The letter was addressed to Eugene Taylor, and it was with regard to the getting up of petitions. It was asking that petitions be sent in at once to the Postmaster-General, or to the department, asking for an increase of service and also urging that pressing letters might be written by the Army officers at White River.

Q. You said, "sent in at once"?—A. Yes, sir.

Q. Was there any reason given for it?—A. They wanted them here certainly before the 1st of March, the letter stated.

Q. What did it say on that subject, if anything?

Mr. WILSON. If you are going into the letter, let Mr. Adams tell what the letter contained.

Mr. BLISS. I say what did it say on that subject?

Mr. WILSON. I do not think that Mr. Bliss has a right to make any suggestion of any subject. If he wants to ask the witness what that letter contained let him ask it.

Mr. BLISS. I did ask it.

Mr. WILSON. The question is not a proper one, I submit to the court.

The COURT. I think not myself.

Mr. BLISS. Your honor, the witness stated that they wanted them here. He said that the letter contained statements that they wanted petitions here before the 1st of March, 1881.

The COURT. I understand it.

Mr. BLISS. Now, I ask him what, if anything, did the letter say upon that subject? I merely direct his attention to that point. I want the whole contents of the letter.

A. Just as near as I can give the contents of that letter it was about as follows. I cannot undertake to repeat the phraseology, but the sum and substance of the letter was this: To have the petitions prepared and signed as numerous as possible; to have the Army officers there write pressing letters to the Postmaster-General for the release and to forward them so that they would certainly reach here before the 1st of March; that if that was done we would have the increase of service.

Q. You have stated all of the letter?—A. All that I recollect distinctly enough to testify about.

Q. After you received that letter did you circulate a petition?—A. Well, sir, I started to circulate a petition. There was a petition inclosed in the letter when it came to me, and I started out to have the officers sign the petition. When I went to the commanding officer, Col. Orlando H. Moore, of the Sixth Infantry, he gave me a stand-off, as we call it. He refused to sign it. He said that he couldn't sign it at all. I finally succeeded in getting two signatures out of that camp, of the officers, and I did not send the petition to Washington.

Q. You abandoned the business, did you?—A. I did, sir; I thought I was not a success in getting up a petition.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. How much of your time have you spent in frontier life?—A. About fifteen years.

Q. What do you think of the necessities for having mails frequent and expeditious at points such as, for instance, White River and places of that kind?—A. It is very nice indeed.

Q. It is very desirable, isn't it?—A. Yes, sir; it is.

Q. How was it on that route; were frequent and expeditious mails needed in that region of country?—A. We felt as though we ought to have frequent mails.

Q. You did not want them to be a long time on the road either?—A. To tell you the truth, Mr. Wilson, they could not come through any too quick to suit us. We were a long ways from the railroad and mails were very nice.

Q. And very desirable, weren't they?—A. Yes, sir; they were.

GEORGE C. SMITH sworn and examined.

By Mr. BLISS:

Question. Where do you reside?—Answer. At Rawlins, Wyoming Territory.

Q. You have the misfortune to be an attorney at law, I believe?—A. I have.

Q. How long have you lived at Rawlins?—A. I have lived there since 1874.

Q. Have you at any time been a notary public?—A. I have.

Q. Were you so in 1879?—A. I was.

Q. Do you know Charles F. Perkins?—A. I do.

Q. How long have you known him?—A. I have known him since 1875.

Q. [Submitting a paper to the witness.] Please look at this paper. I hand you the paper marked 9 L, being Perkins's oath, and ask you if that bears his signature?—A. [After examining the same.] It bears Perkins's signature.

Q. Does it bear your signature?—A. It is mine to the jurat.

Q. Was that sworn to by him before you?—A. It was, but not in that shape.

Q. What was the difference when it was sworn to?—A. The statement of the number of men and horses necessary to perform the service on the route was blank at the time it was sworn to.

Q. After he swore to it before you, what did you do with it?—A. I gave it to him.

Mr. TOTTEN. This man says he is a notary public. He cannot impeach his own official act here.

The COURT. He is not impeaching his jurat.

Mr. TOTTEN. He swore he administered an oath to a man on a blank for the purpose of somebody filling it up.

The COURT. He has proved the condition of the paper.

Mr. TOTTEN. At all events this paper was not acted upon at the department.

The COURT. That is another thing.

Mr. BLISS. That is another thing. We will see to that.

Q. [Resuming.] I understand you to state that at the time the oath was administered where this says, "One time a week, three men, six animals, eighty-four hours"—I don't know about the eighty-four hours—eight men, twenty-four animals" were all blanks?—**A.** The part that was blank was the number of men and animals.

Q. In both branches of the oath?—**A.** Yes, sir. The trips were filled. I am quite sure I am right on that.

Q. Do you know Mr. Eugene Taylor?—**A.** I do.

Q. Did he at any time in the early part of last year show you a letter purporting to come from anybody in Washington?—**A.** Somewhere about the 20th to the 25th of February, 1881, he showed me a letter.

Q. Where were you when he showed it to you?—**A.** At Rawlins, Wyoming.

Q. Whereabouts in Rawlins?—**A.** In my office.

Q. He brought the letter to you, did he?—**A.** Yes, sir.

Q. Did you read it?—**A.** I did.

Q. From whom did it purport to come?—**A.** M. C. Rerdell.

Q. State as fully as you can the contents of that letter.

Mr. WILSON. Your honor, this is not identified as being the same letter, the loss of which has been proved.

The COURT. Does it not tend to prove the contents?

Mr. BLISS. I will fix that, sir. [Calling out.] Mr. Taylor!

Mr. WILSON. Go on and prove it.

Mr. BLISS. No matter, Mr. Taylor, you need not come around. The objection is withdrawn.

Q. [Repeating.] State as fully as you can the contents of the letter?—**A.** I cannot repeat the language. The purport of the letter was this: that he wanted the service on route 38113 put on seven times a week; that he had the arrangements made either with the department or with the Second Assistant, but that they wanted petitions to file and that he should get those up and file them, and he wanted them in so they could reach Washington either before the new administration came in or before the fourth of March. There was something said also about getting private letters.

Q. Have you stated as fully as you can the contents of the letter?—**A.** I believe I have. I stated that he said his arrangements were made to have it put on before the new administration came in, and that he wanted these petitions to be there before that time; that he wished them gotten up and forwarded promptly, and he spoke also in regard to having private parties write letters urging that.

Mr. WILSON. I think your honor this is not permitted to be given in evidence against General Brady, or Mr. Turner?

The COURT. Not at present; no, sir.

By **Mr. BLISS**:

Q. [Resuming.] How came Mr. Taylor to bring that letter to you?—

A. I have for a number of years been doing Mr. Taylor's business, and when he brought that letter he at the same time wanted these petitions that were asked for, written.

Q. [Submitting papers to the witness.] Please look at these petitions and see if they were written by you at that time?—A. [After examining the same.] Yes, sir; I wrote these. There were three petitions written. One of these was circulated in Rawlins by Mr. Taylor at the time, I know of, and I think it was mailed that night or the next night from Rawlins, and as for the other two, one was mailed with this letter that Mr. Taylor showed me, to Mr. Adams, at White River, and the other was mailed to Baggs' Crossing.

Q. [Indicating.] The body of these two petitions was written by you at that time?—A. Yes, sir.

Mr. BLISS. Those are 17 and 18 L.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. How many times did you read that letter you have been talking about?—A. I could not say how many; we read it over and talked it over there between us considerably.

Q. Did you ever see it more than once?—A. Well, it was in the office there during the day, and we mailed it from there at night.

Q. [Submitting paper to witness and indicating.] Did you get these county officers to write that letter to the department?—A. No, sir.

Q. Turn over the sheet and look at the signatures to that; do you know those gentlemen?—A. Yes, sir.

Q. They are reputable gentlemen?—A. Supposed to be.

Q. You know them; they live in that same place?—A. I do not want to speak for myself; but the balance I can vouch for.

Q. Are you one of the gentlemen who signed that?—A. Yes, sir.

Mr. WILSON. Is it possible? I am very glad to see you, Mr. Smith.

Mr. BLISS. That is not the seven-trips petition.

The WITNESS. That letter was written at the request of Mr. Rerdell when he was there.

Q. [Resuming.] What you set forth there is true, is it not?—A. I believe it is.

Q. It does not make any difference who requested you to write it, if what you said here is true.—A. Yes, sir; I think so. It is a request, and we believed what was put there. I did not write the letter; but I signed it, and approved of what was there.

Q. And your purpose in signing that was to influence the Post-Office Department to do what is herein suggested?—A. Yes, sir.

Q. That was done in good faith?—A. Yes, sir.

The COURT. What is the date of that?

The WITNESS. The 20th of January, 1879.

By Mr. MCSWEENEY:

Q. I wish you would repeat again, as near as you can (I did not get it very clearly), the contents of that Rerdell letter of February, 1881. Commence as it commenced as nearly as you can, and give it to us.—A. Well, I wouldn't pretend to commence to repeat it, and say that it was in the order that that letter was; but the substance of the letter was just as I have stated.

Q. Do as well as you can. Just give me that again.—A. It was that he desired to have the service increased to seven times a week, and that an arrangement had been made that it could be done—

Q. [Interposing.] You said awhile ago an arrangement with the department, did you not?—A. Well, I was going to say either with the department or the Second Assistant. In that way was how we understood.

Q. It was one or the other of those expressions?—A. It might have been the department, it might have been the Second Assistant, it might have been Mr. Brady, or it might have been some other language that led us to put that construction upon it. But that was the understanding——

Q. [Interposing.] No, no. We are talking about language. Was it that he had made an arrangement with the department or with Brady; was it one or the other of those expressions?—A. I couldn't say that now.

Q. You did awhile ago, did you not?—A. I said that the letter said that he had made an arrangement with the department or the Second Assistant.

Q. That is your recollection yet?—A. That is my recollection of the letter.

Q. Are you as certain about that as about anything else you are swearing to?—A. I am.

Q. Now, go on from that point. What next?—A. And requesting him to get up petitions and get them in there before the 4th of March or the change of administration.

Q. It was one of those expressions: "Before the 4th of March" or "before the change of administration"?—A. Yes, sir.

Q. You are certain of that?—A. Yes, sir.

Q. As you are of anything you have said?—A. Yes, sir.

Q. Would you recognize the letter if I would read it to you; would it recall it to you?—A. Well, it might.

The COURT. You will have to show it to him.

Mr. MCSWEENEY. I will.

Mr. CARPENTER. [Submitting a letter-press copy book to witness.] Read that.

By Mr. MCSWEENEY:

Q. [Resuming.] Does that look like the original; does it bring it back to your mind and memory now?—A. [After reading.] This letter conveys about the same idea. My recollection of it, though, is that it was written on a note sheet.

Mr. MCSWEENEY. That is a copy.

By Mr. CARPENTER:

Q. Is not that the letter itself?—A. I could not say that it was, but this letter conveys about the same idea.

Mr. MCSWEENEY. But the curiosity is the machinery by which it is conveyed compared with your machinery.

The COURT. Well, the witness only testifies to his recollection of the substance of the letter, and that is all that can be expected.

Mr. MCSWEENEY. But look at the substance: "I have an arrangement with the department" or "with Brady." You see the *litera scriptum* there that memory does not.

Mr. BLISS. I suppose we might fairly object to it at this stage, but I have not the least desire to do so.

Mr. MCSWEENEY. It is to refresh his memory.

Mr. BLISS. To refresh his memory you showed it to him. We do not object to your reading it.

By Mr. McSWEENY :

Q. I asked you your memory of it. See if my memory is not nearer the fact, and see if it does not recall your memory to it. Was not this the way it was :

WASHINGTON, D. C., *February 8th, 1891.*

Was that the date ?

A. I could not fix the date. I can fix about the time it came there.

Q. [Quoting:]

EUGENE TAYLOR, Esq.

DEAR SIR:

Q. That is the gentleman who showed it to you ?—A. Yes, sir.

Q. [Quoting:]

If you will get up petitions at once asking that your route be made six or seven times a week, I can get the increase. Get the officers at White to both sign petitions and write letters to the P. M. General asking for an increase.

Very truly,

M. C. RERDELL

P. S.—This must be done at once, so I can get them by the first of March.

Q. Does that sound like it, you think ?—A. I was going to say that my recollection of the letter was that it was on a half sheet, instead of note paper. I might be mistaken about that.

Q. I do not care if it was on a shingle. What is your memory ?—A. Just what I stated my memory was.

Q. And you say that your memory is that he said he had made an arrangement with the Post-Office Department ?—A. Yes, sir.

Q. You do ? Do you say so now ?—A. I say that my recollection of it is that yet.

Q. And you are going to stick to it ?—A. Yes, sir. I am testifying from my memory. I know we talked it over considerably.

Q. Does the reading of this to you refresh or alter your recollection or modify it ?—A. I cannot say that it does. I say that letter in substance contains my recollection of the other letter, except that it is more brief and my recollection of it is that it was written on a half sheet instead of note.

Q. When I read this to you did you not then say it conveyed about the substance you would have thought that letter to be ?—A. I did. It does.

Q. So that it has about the right jingle to it, it sounds natural to you, as if it was not constructed to meet an occasion ; it sounds like that old letter ?—A. I say in substance it contains about what the other letter did.

Q. Did you hear Mr. Adams give his account of it ?—A. I did. I did not hear all that he said. I was sitting away back in the room where I could not hear all that was said.

Q. So as to prevent any question of identity, was there any more than one letter about that time that Taylor showed to you ?—A. I never saw but one.

Mr. McSWEENY. That is all. [To Mr. Bliss.] Will you permit us to call Mr. Adams back a moment ?

Mr. BLISS. Certainly. My impression is Mr. Adams has gone. He was very anxious to catch a train.

Mr. McSWEENY. I am sorry. Since this letter has been shown to me, I want to cross-examine Mr. Adams.

Mr. BLISS. Here is Mr. Adams now.

JOSEPH B. ADAMS recalled and further cross-examined.

By Mr. MCSWEENEY :

Question. [Submitting letter-press copy-book.] Just look at this letter in this letter-press book and see whether you think that was the composition of the letter that Mr. Taylor sent to you?—Answer. [After examining the same.] Well, sir, that sounds very much like the letter.

Q. Have you any doubt of it being it exactly?—A. I could not say that it is the letter.

Q. This is a letter-press copy?—A. I know, but I could not say that it is an exact copy of the letter I refer to.

Q. Have you any doubt of the composition as to the one that came to you?—A. This reads very much like that, but it does not seem to be the same as the other letter. I may be mistaken as to that. That letter was written on the same kind of paper. It was note size.

Q. Do you recollect what you gave as your recollection of it before?

A. I think I do, sir.

Q. See if this was it: That it was a letter that asked for petitions, request officers to sign, and see that it was sent off by the 1st of March?—A. Yes, sir; that is very near what I said.

Q. Was there anything more in that than in this that I have shown you?—A. I stated, Mr. McSweeney, that I could not attempt to give the caseology of the letter.

Q. But you did give the substance?—A. I think that is the substance. I think that account of it you have there is very nearly it, not it. The letter that that letter came to me inclosed in was a letter from Mr. Taylor.

Q. Do you know the kind of paper it was on?—A. It was note paper.

Q. [Exhibiting page of letter press copy-book.] Is this copy like the one?—A. Yes, sir: that is, sir; because I recollect in searching for it. I recollect how it was folded, even.

Q. You do not recollect of any letter saying, "I have an arrangement with the Post-Office Department to expedite service," or any trash of that kind?—A. No, sir; I never saw anything of that kind.

REDIRECT EXAMINATION.

By Mr. BLISS :

Q. You had an idea that the other letter was longer than this?—A. It appeared so to me. I had an impression to that effect, but it might have been obtained by the letter in which the other was inclosed. It might have been the two together that gave me the impression that the contents were more.

JOHN F. FOOT sworn and examined.

By Mr. BLISS :

Question. Where do you live?—Answer. I live in Rawlins, Carbon County, Wyoming.

Q. How long have you lived there?—A. Since the 1st of April, 1868.

Q. Have you ever had anything to do with carrying the mail on route 13, from Rawlins to White River?—A. Very little.

Q. What did you have to do with it?—A. I carried it, I think, about

six or eight months, or a little over. I carried it from January to October.

Q. What year?—A. Eighteen hundred and eighty.

The COURT. That is nine months.

The WITNESS. About nine months, sir.

Mr. TOTTEN. How long do you say?

The WITNESS. From the 1st of January until the 15th of October, 1880.

By Mr. BLISS:

Q. [Resuming.] When you commenced in January, how many trips a week were run?—A. Three trips.

Q. Was anybody associated with you when you took it?—A. Yes, sir.

Q. Who?—A. A man by the name of Dalton.

Q. What was his first name?—A. George B.

Q. Did he remain with you as long as you kept it up?—A. No, sir; I think he went out about June or July; I forget which exactly.

Q. And after that time?—A. I ran it myself.

Q. With whom did you make your agreement or contract, or whatever it was as to carrying that mail?—A. With a man by the name of Steele.

Q. On his own behalf or representing somebody else?—A. I believe he was representing the firm of Dorsey and Rerdell, or Dorsey and Miner, or something of that kind—J. W. Dorsey, I believe.

Mr. HENKLE. How is that?

The WITNESS. Representing J. W. Dorsey, I think, if I am not mistaken.

Q. [Resuming and submitting a paper to the witness.] Please look at that paper and see if that bears your signature?—A. Yes, sir.

Q. Is that the contract you referred to?—A. That is the contract.

Q. Where were you when it was made?—A. I was in Rawlins.

Q. Did Mr. Steele come there?—A. Yes, sir.

Q. Was Mr. Rerdell out there at that time?—A. I never saw the gentleman out there; no, sir.

Mr. BLISS. This is a contract dated the 27th of December, 1879, between John W. Dorsey, party of the first part, and John F. Foot and George B. Dalton, partners, under the firm name of Foot & Dalton, of Rawlins. They undertake to carry the mail three trips a week and return from the 26th day of December, 1879, to the 30th day of June, 1882, three trips a week, \$10,000 per annum.

The said party of the first part agrees to pay the said second party the sum of five hundred dollars extra for the quarter ending March 31st, 1880, on receipt of certificates of service of postmasters at terminal and schedule offices by the Post-Office Department for that quarter.

The agreement is to carry it on schedule time and for such additional trips as the Post-Office Department may from time to time direct, the party of the first part to bear the fines and deductions, and containing a provision that it shall not be abandoned except on ninety days' notice, and that failure to give such notice should work a forfeiture of all the back pay due and unpaid. It is signed by John W. Dorsey, by M. C. Rerdell, his attorney in fact, by John F. Foot, and by George B. Dalton, in the presence of John H. Steele, Fred. G. Palmer, and C. L. Cumming. It is certified to by the postmaster at Rawlins on the 22d of December, 1879.

[The contract just referred to was submitted to the clerk to be marked, and was by him marked 20 L.]

Q. [Resuming.] When you were performing that contract, what was the schedule time?—A. Forty-five hours.

Q. Did you make that time?—A. Part of the time I did and part of the time I did not.

Q. You got fined when you did not?—A. Well, yes, sir; it was not the calculation to be fined for it, but I was fined all the same.

The COURT. I thought I observed from the way that contract read that the party of the first part was to pay the fine?

The WITNESS. I wanted that erased, and he said after it was signed he couldn't do it.

Mr. BLISS. This is the way it reads:

The said party of the second part further agrees and covenants to and with the party of the first part, that if fines or deductions be made by the Post-Office Department, because the mails between the aforesaid places have not been carried promptly and securely as per agreement, they will pay the said party of the first part all loss and damage which he may sustain in consequence thereof.

The COURT. I was satisfied that was the meaning of it, but you did not read it that way.

Mr. BLISS. I was trying to epitomize it.

Q. [Resuming.] What were you saying?—A. They agreed to pay me in full, anyhow, if I could not get through. The weather was very bad at that time. The winter was a very bad one.

Q. You thought it was not what they agreed to do when they fined you?—A. Yes, sir; it was not what they agreed to.

Q. You stopped after awhile, did you not?—A. Yes, sir.

Q. When you were carrying that mail, how many men and horses did you employ?—A. While Mr. Dalton was with me, during the winter, I used twenty-four horses and nine men.

Q. Were the men all carriers?—A. Yes, sir; every man attended to his own horses at that time.

Q. Now, you used those, you say?—A. Yes, sir.

Q. Now, to perform the service you had to have some extra horses?—A. We needed more horses at that time, but we could not get them. It was a bad time of year to get them. The next summer or spring, I got more horses in place of them.

Q. How many were absolutely needed to perform that service fairly three times a week in forty-five hours?—A. About thirty head of horses—thirty or thirty-four. I should need that, if I was going to run it.

Q. And how many men?—A. I can run it with nine men.

Q. Now, how many men and horses would be required to run that mail in one hundred and eight hours once a week?—A. I could hardly tell that. It is something that I never did.

Mr. BLISS. Well, that is of no importance. That is all.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. As to these deductions and fines; did the contractors divide the losses with you?—A. I don't know whether they did or not. They wrote to me and told me the fines were so much, and that they took half of it on them?—A. I don't know whether it was so or not; I got their word for it, and that is all I know.

Q. They agreed to stand half that loss?—A. They did afterwards. They agreed to stand all of it in the first place.

Q. They did divide the losses with you, did they not?—A. That is what they say. I don't know whether they did or not. I never examined into it.

Q. Do you recollect what time you began the service?

A. The first trip I think we got through on the 6th of January.

Q. Do you not remember that the contractors allowed you from the 1st of January?—A. Yes; that was the agreement, because we didn't have the time to get stock, and it was very difficult to get stock at that time.

Q. There had been a good deal of trouble about getting mails carried on that route?—A. Yes, sir; a great deal of the time.

Q. And the former subcontractors had refused to carry the mail; thrown down the contract, in other words?—A. Something of that kind. I don't know what made the trouble.

Q. Then Dorsey's agents came out there and made this arrangement with you?—A. Yes, sir.

Q. And you had to get your stock and put it on the route?—A. Yes, sir.

Q. And right in the winter time. These former subcontractors having thrown down their contract, you had to go to work right in the winter time to restock that route?—A. I had to go to work right in the winter and buy stock to put on there.

Q. And in consequence of that you were delayed six days in getting the first mail through?—Yes, sir; six days, I believe.

Q. And you had to get in forage also, did you not?—A. We got in what we could.

Q. Whatever it was, you had to get that in?—A. Yes, sir.

Q. And these other parties, Perkins and Taylor, owned the stations along the route, did they not?—A. Yes, sir.

Q. Then, you had trouble to get places to keep your stock?—A. Yes, sir; had to buy them out.

Q. They forced you to buy them out?—A. Yes, sir.

Q. Did Mr. Steele furnish you with forage in order that you might go on and carry the mail?—A. No, sir; he did not. He went over the route once or twice, and got forage probably once or twice when he was going over it at some of the places along the road.

Q. He did?—A. Yes, sir; probably something of that kind.

Q. In other words, did he not make provision for forage so that you might get the mails through?—A. Yes, sir. He might have got a sack of corn, or something of that kind. Any of my drivers might have done it as well as he did.

Q. Did he help you out?—A. In that way.

Q. You say you did run that with nine men?—A. I did run it with nine men; yes, sir.

Q. But if you were going to make provision to run that all winter and summer for four years, would you not make provision for more than nine men?—A. I would put on ten men.

Q. Well, a man who would say it would take eleven men would not be very far out of the way?—A. He would not be far out of the way. Probably he would need one more man than I would.

Q. A man who would say thirty-two horses would not be very far out of the way?—A. Not very far. He might want one or two less or one or two more than I would.

Q. And you would want about thirty-four?—A. Yes, sir.

Q. So that thirty-two is about a pretty fair average for that. In

hunting the men do you count yourself, or do you simply count the carriers?—A. I count the carriers.

Q. Did you have any extra men to do this work?—A. Well, we had to haul grass, or something of that kind.

Q. And occasionally you would have to have horses to haul grain?—A. Oh, yes; I would have to have that, of course.

Q. Did you commence carrying that mail before or after the Ute outbreak?—A. Afterwards.

Q. You didn't do any before?—A. No, sir; I carried it some before that for other parties.

Q. Now, if you were going to make provision to carry that mail for four years, I would ask you to state whether you would not, in addition to your nine carriers, make provision for one or two additional men all the time?—A. No, sir; I told you I would put on ten if I was going to carry it for four years.

Q. Ten carriers?—A. Yes, sir.

Q. Then you would have another man or two to supervise?—A. I think I could do that myself.

Q. Well, you would put yourself in in addition?—A. Yes, sir; that is, I would have ten men besides myself.

Q. Ten for driving?—A. Yes, sir.

Q. Then you would have to make provision for getting in forage in addition to that?—A. Oh, yes.

CHARLES F. PERKINS recalled and examined.

By Mr. BLISS:

Question. I want to ask you a question that I forgot. Did you at any time have any dealings with Mr. Steele in connection with this matter?—Answer. Yes, sir; he came out to my place at Dixon to make a compromise with me in regard to carrying this mail on the forty-five-hour time, and he finally agreed to give me \$6,000.

Mr. WILSON. What is the purpose of this. I would like to find out.

Mr. BLISS. I am going to prove some statements of Mr. Steele or offer it.

Mr. WILSON. I object to it.

Mr. BLISS. It has appeared in evidence that Mr. Steele is the party who came there representing the contractor, for the purpose, as he says now, of endeavoring to compromise a disputed claim with him, and that they made a settlement. It also appears that Mr. Steele is the party who made the contract with the last witness on behalf of the contractor, Dorsey. I am proposing to ask this witness as to what passed between him and Mr. Steele, and the statements made by Mr. Steele at the time he came there on behalf of these contractors adjusting the amounts due.

The COURT. What authority has Steele to make any such statement to bind his principal?

Mr. BLISS. He was sent there to adjust the amount due, and he gave the reasons why such and such amount ought to be accepted, and he did adjust it, and it was closed out in that way. He was right in the line of his business, as I understand it.

Mr. WILSON. In other words——

Mr. BLISS. [Interposing.] I want to say that I have not talked with this witness upon that point. I am merely stating what is my understanding about it, arising from my memorandum, which I had overlooked.

Mr. WILSON. In other words, he wants to prove by this witness what Mr. Steele stated to him, to induce him to enter into a compromise, or as bearing upon a compromise, he was going to make with this witness about some matters of dispute between him and the contractor. That is the substance of it, and I object.

The COURT. It seems to me, Mr. Bliss, that this is not competent evidence. The settlement closed all previous conversation.

Mr. BLISS. Undoubtedly. I am not going to undertake to vary the substantial circumstances at all. I am going to offer his declarations, his statement made in the progress of that settlement, as an independent, distinct fact, which was the reason why they could not pay anything more.

The COURT. For the purpose of affecting Steele's principal.

Mr. BLISS. Yes. I do not desire to state it in the presence of the jury. If Mr. Wilson will let me state it to your honor, I would like to have your ruling upon it.

Mr. WILSON. No.

Mr. BLISS. Your honor, I think I have a right to state the purport of it. I do not desire to prejudice the case by doing it before the jury.

The COURT. The agent was authorized undoubtedly to make the settlement.

Mr. BLISS. Yes.

The COURT. If you could show that he was authorized to make some other settlement, then it might be evidence; but I do not see that the offer you now make goes to that extent.

Mr. BLISS. I wanted to state what I propose to your honor in the presence of Mr. Wilson, but not to prejudice the case with the jury.

The COURT. I do not know anything about that; but the statement you propose to prove made by Steele is a statement of Steele, and so far as the offer goes, was unauthorized by his principal.

Mr. BLISS. Unauthorized so far as any evidence goes that I can offer as being directly authorized by his principal; your honor's statement of it is correct. But when a party sends his agent to adjust a matter, and in the course of that adjustment the agent makes statements of alleged fact as the reason why the thing should be adjusted in that particular way, then I submit that that statement is within the scope of the agent's authority. That is all I have to say. Of course, if he stated the matter outside, I would not urge it.

Mr. INGERSOLL. Suppose he said that the reason he wanted to settle cheap, was because he had to give \$10,000 to the President, or he had to give \$1,500 to the Postmaster-General; what has that to do with this case? They would certainly have to show that he had been authorized to make that statement.

The COURT. That is the view I am inclined to take about it. I think it is not competent.

Mr. BLISS. I do not want to repeat what I expect to prove or to vary the offer, I understand your honor to rule that no evidence of what Steele stated in that negotiation, even though bearing directly upon the terms of the negotiation and settlement is admissible without other evidence of the authority of Steele to make the statement.

The COURT. Yes.

Mr. BLISS. I cannot furnish that evidence, and, therefore, there is no use of my—

The COURT. [Interposing.] Undoubtedly the principal is bound by the representation of his agent in regard to the subject of their bargain, in regard to the subject of his agency. If the bargain is assailed after-

is on the ground of misrepresentation on the part of the Govern^t, the agent's statement, of course, would be competent evidence for purpose of impeaching the contract. But so far as I see here, this, as an argument for the purpose of bringing about his bargain, compromise, made certain statements tending to implicate somebody else. Well, so far as those declarations go merely to implicate somebody else and were used merely as arguments, I think they are competent evidence, because they do not relate to the consideration of the contract, and they cannot be regarded as entering into the consideration of contract.

r. MCSWEENY. If there are any real facts, Steele is a witness. Let me call upon Steele for anything he knows.

he COURT. An agent may use as many arguments as his imagination may suggest to bring about a contract; but unless those arguments relate to the consideration of the contract I cannot see that his representations would bind his principal.

r. BLISS. Suppose the case of a man coming there to negotiate a contract with Mr. Perkins, Mr. Perkins having the contract with Mr. Percy, and there having been a difficulty between them, and Mr. Percy substantially says, "Why, here, I am getting only \$5,100 a year, am doing all the work, and you in Washington are getting twelve or thirteen thousand dollars for doing nothing. This is a matter of promise and adjustment between us. Mr. Rerdell told me that the contract should not be below eighty-four hours. You have brought it down below eighty-four hours a good deal, and you are getting all the excess." Then suppose Mr. Steele says, "No; you are mistaken. We are not getting the excess," and goes on and makes a statement in that direction. Is not that pertinent evidence?

he COURT. I think not.

r. BLISS. That is the precise point to which I want to direct your Honor's mind.

he COURT. I think it is not competent. It belongs to the domain of argument and not to the substance of the bargain.

r. BLISS. It is a statement of a fact.

he COURT. Not with regard to matters entering into the contract.

r. MCSWEENY. If there was any doubt before, the statement of the gentlemen removed it in my mind.

he COURT. I think it cannot be competent evidence.

r. BLISS. [To the witness.] Then that is all.

The witness left the stand.]

r. BLISS. I think that is all the oral evidence I desire to offer this afternoon upon this route. I have not read the record evidence which has been identified. There are several witnesses here who are desirous of getting away, and I will, therefore, pass from this route, leaving the record evidence to be put in and take up one or two short matters on other routes.

r. HENKLE. If the court please, I would like to have Mr. De Busk called for the purpose of asking him a single question.

r. BLISS. Is he here?

r. HENKLE. Yes.

r. BLISS. I have no objection.

r. WILSON. Your honor, I know there are witnesses here who are exceedingly anxious to get away, and, under the circumstances, I do want to insist upon reading any of these papers belonging to this case that I desire to put in evidence. I do not, however, waive anything that I have by passing over the matter now.

The COURT. Of course, you waive no right.

Mr. WILSON. I want them to go in connection with this route before it is closed.

Mr. BLISS. We will see about that. You will be in just the same position as if we went on through this route.

The COURT. Yes.

Mr. BLISS. We have a right to put our evidence in in such order as we choose.

Mr. WILSON. We are not objecting to that, but simply suggesting that no right is waived.

Mr. BLISS. In order to prevent Mr. De Busk from being kept here, I am perfectly willing to have him recalled now.

S. W. DE BUSK recalled.

By Mr. HENKLE :

Question. I want to ask you whether you carried the mail over that route in the last quarter of 1879 and the first quarter of 1880 ?—Answer. I did, sir.

Q. I want to ask you whether you were fined for failure to perform the service in those quarters.—A. There were deductions made from my pay for both of those quarters.

Q. Do you remember how much they were ?—A. The last quarter of 1879, I think, the deduction was \$38.02 ; in the first quarter of 1880 it was eighty-odd dollars.

Mr. HENKLE. If the court please, in this schedule of the drafts put in evidence on yesterday for the payments on this route I find a draft which purports to have been issued on the 11th of April, 1882, for \$26.25 for remissions in the fourth quarter of 1879, and the first quarter of 1880. The draft seems to have to been issued and delivered to John R. Miner, contractor. In the other payments all the drafts are issued to somebody as assignee. From the second quarter of 1879, down to the suspension of the service, the drafts were issued to S. W. Dorsey, assignee, and to his subcontractor, Bosler ; but intermediate between them is this draft issued to John R. Miner for remission in those two quarters.

The COURT. And you want to know whether he got the money.

Mr. HENKLE. I want to know whether Mr. Miner has delivered to the witness that draft or warrant ?

The WITNESS. Yes, sir ; I have the draft in my pocket.

The COURT. It is paid then. You have got the money.

By Mr. BLISS :

Q. When did he pay you ?

Mr. HENKLE. To-day.

A. He paid me about thirty minutes ago : but I am much obliged to him for it.

By Mr. HENKLE :

Q. Mr. Miner delivered to you the actual warrant, did he not ?—A. Yes, sir.

Q. The warrant had never been collected by Mr. Miner ?—A. Mr. Miner stated to me that it had been in his possession for quite a while ; that he had been retaining it to deliver it to the party who actually did the service, and that he learned from my evidence yesterday that I did the service during that year.

Q. Had you ever known Mr. Miner before you came here?—**A.** Never, until I came here the last time.

By Mr. WILSON:

Q. I want to call your attention to one question. I understood you to say yesterday that your salary as postmaster at Raton for one year was about \$17?—**A.** It could not have been more than that amount, and I think considerably less. It was sixty per cent. of the sum of the stamps that I sold.

Q. What was your salary at the time the service was put on from Trinidad by way of Raton?—**A.** The service was put on in January, 1879, and my salary then would have been much less, because the law was changed, and instead of postmasters of the fourth class getting sixty per cent. of the stamps they could sell they received sixty per cent. of the stamps they canceled. The business at the office was not then over \$10 per year.

Q. What I want to ask you is whether the Postmaster-General of the department could have put on special service from any of these adjoining post-offices for two-thirds of the salary that you were getting?

Mr. BLISS. Whether they could have done so and so?

Mr. WILSON. I want to show, if your honor please, that the only way was to embrace it in this route, because it could not have been carried any other way.

Mr. BLISS. There was no reason for violating the law in doing it.

Mr. WILSON. It was not violating the law.

The COURT. It might have been a reason for not establishing this kind of an office.

Mr. WILSON. But that was done by the First Assistant Postmaster-General.

Q. I want to know whether you could have hired the mail carried from any of these adjacent offices, say Pulaski or Linwood to Raton for two-thirds of your salary?—**A.** I could not.

Q. It could not have been done?—**A.** No, sir.

Q. So that the only way to get the service was to embrace it on some route?—**A.** I do not say so because I am not informed as to the mode.

Mr. WILSON. Very well. We will leave it there.

By Mr. BLISS:

Q. For what sum could the mail have been hired to be carried from Raton to Linwood, which is about six miles, I think? What would be a fair sum for carrying it?—**A.** Those of us there would have carried it for a very small price for the sake of getting service.

Q. What would be a fair price for carrying it?

The COURT. How often a week?

Mr. BLISS. Well, once a week.

A. The distance is five or six miles. It could be carried once a week from Linwood to Raton for \$100 a year by parties living there or three times a week for about \$200 per year.

Q. Has the mail been carried from Raton either to Linwood or Pulaski at any time since then?—**A.** It now comes from Pulaski to Linwood, and from Linwood to Raton.

Q. Do you know what is paid for that service now?—**A.** I do not. I heard some statements, but I cannot recollect them.

Q. It is on the regular route then, that way?—**A.** It is brought three times per week from Hahn's Station, which is half a mile from Pulaski.

By Mr. WILSON :

Q. Linwood was only a special office, was it not?—A. I do not know what kind of an office. It was a post-office.

Q. But it was not on any regular route?—A. For quite awhile they had no service there.

Mr. WILSON. It was only a special office.

The COURT. I thought Linwood was on the railroad.

Mr. BLISS. Pulaski is on the railroad.

Mr. WILSON. And had to be served from Pulaski because Linwood was only a special office.

Mr. BLISS. If there was a special office and a special service to Linwood, and they could reach Raton within six miles they could do it.

Q. There were remissions made in your pay on account of these deductions?—A. Yes, sir.

Q. Were they promptly delivered to you as soon as made?—A. I don't know whether I understand you or not. Please repeat your question.

Q. There had been deductions made from your pay?—A. Yes, sir.

Q. And there were remissions made of those deductions?—A. There were no remissions made to me to my knowledge prior to last February, when I went personally before Mr. Green and asked for remissions, proposing to submit some evidence.

Q. When they were made you got your money?—A. I did. Mr. Rerdell advanced the money that was remitted last February. I wanted to leave.

Q. In other words, you came here before the department, made your representations about the failures, and they remitted?—A. Remitted not to me, but to the contractor.

Q. They remitted to the contractor. Your subcontract was not on file, was it?—A. No, sir; I was not known at the department.

Q. They did not know you, and they made the remissions in favor of the contractor?—A. And the contractor paid them to me because I had done the service.

Q. He paid it to you promptly the day it was remitted, did he not?—A. Yes, sir.

By Mr. BLISS :

Q. You came here last February to go before the grand jury as a witness in this case, did you not?—A. Yes, sir.

Q. It was after Mr. Rerdell advanced the money to you, was it not?—A. That was the time I tried to convince Mr. Green that they had deducted from me wrongfully.

By Mr. HENKLE :

Q. That was the time the department made the remission?—A. That was the time they made one remission of \$26.

By Mr. WILSON :

Q. The department did not influence your testimony in any way by making those remissions, did it?—A. I think not.

Q. Mr. Rerdell did not influence your testimony by paying you what was honestly due you?—A. I think not.

Q. That was done after you had been before the grand jury, was it not?—A. I was about ready to start for home when that was done.

Mr. BLISS. I will now call Mr. C. C. Shaw.

The COURT. Upon what route?

Mr. BLISS. No. 35015, from Vermillion to Sioux Falls.

C. C. SHAW sworn and examined.

By Mr. BLISS:

Question. Where do you live?—Answer. Vermillion, Dakota.

Q. How long have you lived there?—A. Nearly seventeen years.

Q. I think you were postmaster at Vermillion?—A. Yes, sir.

Q. How long have you been such?—A. Nine years last past; since April, 1873.

Q. [Submitting a paper indorsed 1879, December 15.] Please look at this paper and state if it bears your signature?—A. Yes, sir; it bears my signature.

Q. I found that paper on the files of the Post-Office Department. Do you know how it came there?—A. Yes, sir; I think that is the one. I sent it to the Hon. C. G. Bennett, who was then representing us as our Delegate in Congress.

Mr. BLISS. It is one of the papers identified by Mr. Sweeney.

By the Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General.

SIR: We, the undersigned, postmasters on the U. S. mail route No. 35015, from Vermillion to Sioux Falls, Dakota Territory—

Mr. WILSON. [Interposing.] Have those papers been identified?

Mr. BLISS. I understand they have been. I think they were in a lot identified the other day.

Mr. WILSON. They could not be because they belonged to Mr. Brewer's vision and not to Mr. Sweeney's.

Mr. BLISS. I think Mr. Sweeney identified them.

Mr. WILSON. He could not.

Mr. BLISS. If you say he did not, all right; I am under the impression that he did.

Mr. WILSON. It would be impossible.

Mr. BLISS. I cannot refer to the record, but I supposed they were included in the lot identified the other day.

Mr. WILSON. I do not want to detain Mr. Shaw, and am willing you should go on, provided you will bring Mr. Brewer here to identify them.

Mr. BLISS. Of course I will, if they have not been identified.

Mr. WILSON. I will not detain the witness.

The COURT. That is very civil.

Mr. WILSON. That is what I want to be.

Mr. BLISS. [Continuing to read.] The mail on the above route—

Mr. WILSON. [Interposing.] You may ask any questions you wish to ask in connection with it, but it should not be read to the jury without identification.

Q. This was sent by you to Mr. Bennett?—A. Yes, sir.

Q. Did you receive anything in reply?—A. I received a reply from the Second Assistant Postmaster-General's department.

Q. How was that reply received?—A. It was sent to Judge Bennett and forwarded by him to me.

Q. What has become of it?—A. It was destroyed in the flood a year ago last April.

Q. What was the nature of the reply?—A. The purport of it was that the request of the petitioners could not be granted for the reason that it would be injustice to competing bidders.

Q. You signed a petition, did you not, for increase of service and expedition upon this route?—A. I find that I did, but I did not read the

petition. If I had I should have discovered the ten-hour schedule. I would not have recommended a ten-hour schedule on a seventy-mile route by any means.

Q. [Submitting petition indorsed 1879, May 14.] In point of fact you did sign that petition?—A. Yes, sir.

Mr. BLISS. I am merely proving it. As they are allowing Mr. Shaw to go away they ought to have the benefit of the fact that Mr. Shaw did sign the petition.

The COURT. He says he did not sign it.

Mr. WILSON, Yes, he did.

The COURT. Not as it is now.

Mr. BLISS. Yes, sir; he signed it. I am giving Mr. Wilson the benefit of the fact, as they are allowing him to go away.

The WITNESS. I signed it, but I never read it. I may have signed it probably in the hurry of business, somebody coming and saying "Here is a petition for six times a week service." If I had read it I would have discovered the ten hours' schedule, and certainly should not have signed it with that in.

Q. How far is it from Vermillion to Sioux Falls?—A. About seventy miles.

Q. What kind of a country?—A. A level country; nearly so; good roads.

CROSS-EXAMINATION.

By Mr. WILSON:

Q. Do you know who wrote the body of this petition?—A. I could not tell, sir.

Q. Do you know these people who signed it?—A. Yes, sir.

Q. Are they respectable gentlemen?—A. Well, I think they are.

Q. Are you aware of the fact that this route was advertised as fifty miles?—A. I am aware of it, sir.

Q. How long have you been here?—A. I arrived here somewhere about the middle of May, I think.

Q. Have you been here ever since?—A. Most of the time; I have not been here all the time.

Q. Were you here last February also?—A. Yes, sir.

Q. How long were you here then?—A. About eight or ten days; something like that.

Q. How far is it to where you live?—A. I do not know.

Q. The way you have to travel?—A. It is nearly two thousand miles.

Mr. MCSWEENEY. And you expect to be home by the 4th?

The WITNESS. I don't hardly think I will.

By Mr. BLISS:

Q. Your anxiety to get home is to make your quarterly returns, is it?—A. That is what I want to get home for; yes, sir; that is why I am hurrying back.

WILLIAM A. LEECH sworn and examined.

By Mr. BLISS:

Question. Where do you live?—Answer. Kidder, Dakota Territory.

Q. How long have you lived there?—A. A little over six years.

Q. Have you ever had anything to do with carrying the mail on route 35015, from Vermillion to Sioux Falls?—A. Yes, sir.

Q. With whom did you make your arrangements for carrying it?—
The first contract was drawn up with an agent by the name of Williamson.

Q. An agent for whom?—A. John W. Dorsey.

Q. Was there a second contract?—A. Yes, sir.

Q. Made with whom?—A. With Mr. Williamson's brother; I do not know their given names.

Q. How long did you carry the mail there?—A. I carried the mail from some time in August, 1878, until the middle of February, 1880.

Q. When you commenced carrying the mail, how many trips did you make per week?—A. One trip.

Q. On what time?—A. A fourteen-hour schedule.

Q. How far is it from Vermillion to Sioux Falls?—A. Seventy miles.

Q. Was the number of trips at any time increased?—A. It was increased to two trips the 1st of January, 1879.

Q. Were other trips added at any time?—A. It was increased to six trips.

Q. When?—A. The 1st of August, 1879.

Q. Was the time at any time reduced from fourteen hours?—A. Yes,

Q. When was that?—A. The 1st of August, 1879.

Q. What was it reduced to?—A. Ten hours.

Q. Is Brighton a post-office on that route?—A. Yes, sir.

Q. Was it always on that route?—A. It was there ever since I have been.

Q. Was Brighton advertised in the advertisement as a post-office on that route?—A. I could not say as to that. I know Brighton post-office was there. I could not say.

Q. Was Brighton post-office directly on the road, or do you go off the road to get there?—A. No, sir; it is not out of my road at all.

Q. Did including Brighton post-office add anything to the distance?—A. No, sir.

Q. Is there a post-office called Kidder?—A. Yes, sir.

Q. While you were running the contract was there any change in the location of the post-office at Kidder?—A. Yes, sir.

Q. Was the effect of the change to increase or diminish the distance?—A. It decreased it.

Q. How much?—A. Three miles.

Q. Do you know when that post-office at Kidder was moved or changed?—A. I do not remember the date.

Q. Do you remember what year?—A. Yes, sir; in the fall or the forepart of the winter of 1878.

Q. What kind of a country is that through which this route runs?—A. It is a level country, with some rolling prairie.

Q. How many post-offices are there on the route?—A. There were ten post-offices between the two points at the time there were six trips a week.

Q. You had to stop at each post-office?—A. I had to stop at each post-office; yes, sir.

Q. With a schedule of ten hours?—A. Ten hours; yes, sir.

Q. You then had to make seven miles an hour independent of stops?

The COURT. No, including stops.

Mr. BLISS. He had to make seven miles an hour, and everything that is taken off for stops required his speed to be increased. That is what I mean.

The COURT. That is the same thing. He had to make the seventy miles in ten hours, including stoppages.

Q. You had to make the whole seventy miles in ten hours, including stops?—A. Yes, sir.

Q. How much time is allowed for stoppages at each post-office?—A. Seven minutes, I believe.

Q. In point of fact, did you make the time?—A. I made the time the first two and a half months or three months, I am not certain which; two and a half months anyway. The roads were in the finest condition, and my stock was in good condition; but after that I never made the time.

Q. Why not?—A. The roads got worse with the winter coming on, and my stock ran down.

Q. You could not make the time?—A. I could not make the time; no, sir.

Q. How many men and animals did you use?—A. I used fifteen horses and two drivers.

Q. That was when you were running six trips a week?—A. Yes, sir.

Q. On a ten-hour schedule?—A. Yes, sir.

Q. How was it when you were running one trip a week on a fourteen-hour schedule?—A. I used four animals and one driver.

Q. How when you were running twice a week on a fourteen-hour schedule?—A. Four animals and one driver.

Q. What was the amount of mail passing over that route?—A. Well, I do not know as I could tell you exactly how many pounds.

Q. About; you know what was a fair average?

The COURT. At what time?

Mr. BLISS. I was going to let him fix the time.

A. I should think it would measure about a bushel; somewhere along there. As to weight I cannot tell you anything about it.

Q. Was the mail larger going from Vermillion north, or from Sioux Falls south?—A. From Vermillion north.

Q. What is the population of Vermillion?—A. It is about fifteen or eighteen hundred, I should think.

Q. What was it in 1879?—A. About the same; it might have been a little more?

Q. What was the population of Sioux Falls in 1879?—A. About three thousand.

Q. Now, were these intermediate post-offices villages, or what were they?—A. They were nothing but post-offices. There were no towns between Sioux Falls and Vermillion.

Q. It is a farming region, I suppose?—A. Yes, sir.

Q. And the farmers came to these post-offices to get their mail?—A. Yes, sir.

Q. In 1879 was the country thickly settled, or what was it?—A. Yes, sir; it was pretty thickly settled.

Q. What do you call thickly settled?—A. It was not as thick as it is in this part of the country.

Q. Was there any through mail passing over this route?

The WITNESS. From Vermillion to Sioux Falls?

Mr. BLISS. Yes; going beyond.

A. As to that I could not tell you.

Q. You do not know?—A. No, sir.

CROSS-EXAMINATION.

By Mr. HINE :

Q. You carried the first mail through under this contract, did you ?—A. No, sir; the mail was hired to be carried by the trip before I took it.

Q. That was under a special contract made by the postmaster ?—A. There was no special contract made at all before I took it that I know of.

Q. Who did carry the mail commencing on July 1, 1878 ?—A. I could not tell you, sir.

Q. When did you commence ?—A. I could not tell you the date. I commenced carrying it by the trip some time in August, 1878.

Q. And that contract, you say, was made by Mr. L. B. Williamson ?—A. Mr. Williamson. I do not know what his initials were.

Q. That was the contract for one trip per week, was it not ?—A. Yes,

Q. Then, I understand you to say you used four horses and one man ?—A. Yes, sir.

Q. And when you carried it twice a week ?—A. I used four horses and one man twice a week.

Q. One man besides yourself ?—A. No, sir.

Q. Did you carry it yourself ?—A. Carried it myself.

Q. Who took care of your horses when you were off on the route ?—A. I hired them taken care of.

Q. You took care of them at one end ?—A. I hired one team taken care of and I always had one team in my charge. I always drove two horses at a time, and those two horses I took care of and the other two I hired taken care of at the station.

Q. That route was advertised and let for fifty miles, was it not ?—A. Yes, sir; it was advertised fifty miles.

Q. When did you first discover it was more than fifty miles ?—A. I discovered that a year or two before I took the route.

Q. Then you knew it when you took the route ?—A. Yes, sir.

Q. Now, we will pass on down to the date when the time was reduced. That was when ?—A. That was in August, 1879.

Q. Then you made a new contract, did you ?—A. Yes, sir.

Q. When you made that new contract you knew that the time had been reduced ?—A. I knew it was a ten-hour schedule.

Q. And you made that contract in view of carrying the mail over that route in ten hours, did you not ?—A. I knew it was a ten-hour schedule, but I did not suppose—

Q. [Interposing.] I did not ask you what you supposed. You made that contract with that knowledge ?—A. Yes, sir; I did.

Q. It was to be carried during the balance of the contract term, June 1882, was it not ?—A. Yes, sir; that was the contract.

Q. That was a written contract, was it not ?—A. Yes, sir.

Q. Have you got it ?—A. No, sir; I have not.

Q. What have you done with it ?—A. I could not tell you where that contract is.

Q. What preparations did you make for carrying that mail on a ten-hour schedule three trips a week ? What number of horses and men did you provide ?—A. I provided fifteen head of horses and two men.

Q. Was that to carry it three times or six times a week ?—A. That was six times a week.

Q. Now, to carry it on a schedule of ten hours three times a week,

how many men and animals did you provide ?—A. I did not carry it on three trips.

Q. It never was carried three trips a week ?—A. No, sir.

Q. In carrying this mail on a ten-hour schedule what distance would you have to have your stations apart—once in ten miles ?—A. I had some of my stations twelve miles, some fifteen miles, and one was eighteen miles.

Q. Would it not be necessary, in order to carry that mail over that route on a schedule of ten hours, summer and winter, to have your stations not more than ten miles apart ?—A. It would be better ; yes, sir.

Q. Would it not be necessary, in order to be sure and get your mail through ?—A. Well, the shorter the stations the better.

Q. Could you reasonably expect to carry that mail on a schedule of ten hours without having stations not at a greater distance apart than ten miles ?—A. I could carry it on longer stations than that if I had stock enough.

Q. How much stock ought a man to have on such on a route as that carrying it on a ten-hour schedule with a reasonable certainty that he would get through summer and winter on six trips a week ?—A. I should not undertake to carry it through on that route again with less than twenty-two head of horses.

Q. And how many men ?—A. Three men.

Q. Then you would want some extra horses besides that, would you not, to relay or to take the place of disabled horses ?—A. We would need them.

Q. About how many ?—A. I should not keep more than three extra horses.

Q. So that it would take about twenty-five horses, would it, to carry the mail through with reasonable certainty the year around ?—A. Yes, sir ; I think it would the year around.

Q. You carried that mail down, you say, until about February, 1880 ?—A. Some time in the middle of February, 1880.

Q. Did you notify the contractor that you would not carry it any longer ?—A. I don't remember whether I ever wrote such a letter or not, but I don't think I did. I don't remember doing it.

Q. Why did you not, when you threw up that contract or neglected to carry it any longer, notify the contractor of your intention ?—A. I notified the postmaster, I believe.

Q. You concluded upon some trip through there that you would not carry the mail any longer, and so you dropped it ; that was about it ?—A. I had been studying over it a month or two before I quit.

Q. But you did not notify the contractor, only the postmaster ?—A. I don't remember whether I notified the contractor or not.

Q. Do you not think it placed the contractor in a very bad position with the department for you to leave the route without notifying him ?—A. I didn't know how that was.

Q. You did not care, did you ?—A. All I cared about was to get out of it, and get it off my hands. I had lost everything I had, and I couldn't run it any longer.

Q. That resulted in the postmaster putting on special carriers, did it not, for a time ?—A. Yes, sir.

Q. And then they made a new contract as soon as they could get an agent there ; made a contract with Mr. Berry ?—A. There was a new contract made, but with whom I do not know.

Q. Was it not Mr. Berry that the new contract was made with ?—A. I have heard it was since then.

Q. How did you station your men along that line of seventy miles in order to carry it during the time that you did carry it regularly on that schedule of ten hours?—A. I had a driver start out from each end of the road every morning, and drive to the noon station, and drive back again.

Q. Did one driver drive twenty-five miles and back in one day?—A. He drove thirty-five miles and back every day.

Q. Making seventy-five miles a day for each driver?—A. Yes, sir.

Q. That was pretty heavy driving for summer and winter, was it not?—A. Pretty heavy for winter.

Q. How many stations did you actually have along the line of the road?—A. I had four stations between the two points.

Q. That took four men, then, besides the carriers, did it not?—A. I did not hire any man by the month to take care of my stock.

Q. You made arrangements with men along the route?—A. Yes, sir.

Q. Who took care of your stations for you?—A. I hired them; they furnished me stabling—

Q. [Interposing.] Never mind; Vermillion is a station on the railroad, is it not?—A. Yes, sir.

Q. Where they get their mail every day?—A. Yes, sir.

Q. When was the road completed through to Sioux Falls?—A. I don't remember the date, but I think it was in 1876 or 1877.

Q. This is an excellent agricultural region, is it not, and well settled by farmers?—A. It is pretty well settled.

Q. The route runs between two railroad stations on different roads, Vermillion and Sioux Falls?—A. Yes, sir.

By Mr. BLISS:

Q. When was the railroad finished to Vermillion?—A. I could not tell you; it was built before I ever went there.

By Mr. HINE:

Q. You spoke of Brighton having been added to the route?—A. I do not understand about that Brighton post-office; the office was established there when I began running on the route, and it is there to-day, as far as I know.

Q. You spoke of Kidder not adding anything to the distance?—A. Kidder decreased it three miles in being moved.

Q. How did it happen that they decreased the distance by adding another station?—A. They moved the office; they did not add another station.

Q. Was the line at one time taken off from Sioux Falls and run up to Worthing?—A. It was cut off sixteen miles to Worthing.

Q. And the pay was correspondingly decreased, was it not?—A. I don't know anything about that.

By Mr. BLISS:

Q. You said you understood the schedule of time was ten hours. Who told you so?—A. I understood that from the way the contract was drawn up.

Q. From whom did you get that understanding?—A. I got that understanding, I believe, from Mr. Williamson.

Q. You said that a certain number of miles were taken off the north end of the route so as to make the north terminus Worthing instead of Sioux Falls?—A. Yes, sir.

Q. That was after your service?—A. That was after my contract.

Q. How much did it reduce the distance?—A. Sixteen miles.

Mr. BLISS. That is all.

FRANK L. SNYDER sworn and examined :

By Mr. BLISS:

Question. Where do you live ?—Answer. I live in Vermillion, Dakota.

Q. How long have you lived there ?—A. About fifteen years.

Q. Have you ever had anything to do with carrying the mail on route 35015, from Vermillion to Worthing ?—A. Yes, sir.

Q. When ?—A. Eighteen hundred and eighty.

Q. What time did you commence ?—A. March 1st.

Q. Who was your employer ?—A. George Berry.

Q. Did you carry the mail ?—A. Yes, sir.

Q. Over the whole route ?—A. Yes, sir.

Q. How far is it to Worthing ?—A. Between fifty and fifty-five miles. It never was surveyed, and we do not know exactly.

Q. How many trips a week did you carry it ?—A. Three trips.

Q. On what schedule of time ?—A. From March 1st to the 1st of July the schedule time was eight hours.

Q. Then, after the 1st of July ?—A. In twelve hours.

Q. Now, when the schedule was eight hours, how many men and horses did you employ ?—A. We had three horses and one man.

Q. The one man was yourself ?—A. Yes, sir.

Q. Now, when the schedule was extended to twelve hours, how was it ?—A. We used the same number of horses.

Q. And the same number of men ?—A. Yes, sir.

Q. Have you ever been employed there when it was run six times a week ?—A. No, sir.

CROSS-EXAMINATION.

By Mr. HINE:

Q. You spoke so low I could not understand what you said. When did your employment commence in carrying the mail from Vermillion to Worthing ?—A. The 1st of March, 1881.

Q. And for whom did you carry it ?—A. George Berry.

Q. How long did you carry it ?—A. I carried it seven months.

Q. During the summer ?—A. Yes, sir.

Q. What was the distance from Vermillion to Worthing ?—A. It never was surveyed, but it is generally called fifty-five miles.

Q. You went through in eight hours during the first two months ?—A. I tried to.

Q. In eight hours ?—A. Yes, sir.

Q. Did you do it ?—A. I did it when the roads were perfectly dry, and there was nothing to bother me ; I could do it then.

Q. What time did you change from eight hours to twelve ?—A. The 1st of July.

Q. Eighteen hundred and eighty-one ?—A. Yes, sir.

Q. Why was that change made ?—A. They got up a petition, and the postmasters on the line signed it to have it changed.

Q. It was changed, then, by a petition from the postmasters ?—A. Yes, sir.

Q. How did you station your horses when you went that distance in eight hours ?—A. We started out with one horse and drove him seventeen or eighteen miles, and took the second horse and drove him about the same distance.

Q. With whom did you leave that first horse when you went out seventeen or eighteen miles?—A. With a farmer on the road.

Q. Then you took another horse and drove him about how far?—A. About the same distance.

Q. And left that horse with whom?—A. With a farmer.

Q. You paid the farmer for keeping him?—A. Yes, sir.

Q. And then how far did you drive?—A. Then I took the third horse and drove the rest of the distance; I can't say whether it is seventeen, eighteen, or nineteen miles.

Q. Did you hear the testimony of Mr. Leach a few moments ago, with reference to the stock you had to use?—A. I did.

Q. Did you have any extra horses?—A. I did not.

Q. Where is Mr. Berry?—A. I don't know, sir.

Q. Did he come on here as a witness?—A. I don't know, sir.

Q. Why did you discontinue carrying the mail?—A. I wanted to quit the business; I wanted to quit the job.

Q. And you couldn't do it?—A. I could, if I had wanted to.

Q. Your stock kept up pretty well?—A. I thought myself they kept in pretty good shape.

Q. How many extra stock did you have?—A. None.

Q. How many did you use?—A. Three.

Q. The same three all the time?—A. Yes, sir.

Q. You are certain of that?—A. I am; excepting when one of my horses was lame, I couldn't use him. He wasn't lame because of any hard driving that I did; it was because of the Norwegian's ignorance.

Q. You have been here a couple of months, have you?—A. Pretty near it.

REDIRECT EXAMINATION.

By Mr. BLISS:

Q. Was the stock on the route yours or Mr. Berry's?—A. Mr. Berry's.

Q. Then you were simply working for Mr. Berry?—A. I was simply working for Mr. Berry.

RECROSS-EXAMINATION.

By Mr. HINE:

Q. What was Mr. Berry doing?—A. I don't know; I expect he was attending to other business.

Q. During the time that you were carrying the mail what was his business?—A. I don't know.

Q. Did he superintend it?—A. Yes, sir.

Q. He superintended the carrying of it, did he?—A. He superintended it as well as he could. I never saw him from the time I commenced to work for him until I quit.

A. J. McDONALD sworn and examined.

By Mr. BLISS:

Question. Where do you reside?—Answer. Uintah, Utah.

The COURT. What route is this on?

Mr. BLISS. This is on Ouray to Los Pinos, No. 38152.

Q. [Resuming.] You at one time lived at Los Pinos, Colorado?—A. Yes, sir.

Q. You were postmaster there, were you not?—A. Yes, sir.

Q. When were you postmaster?—A. From the fall of 1877, until early in 1879—January, February, or March.

Q. Had you any other business from that of postmaster?—A. I was surgeon there.

Q. What was the place?—A. At Los Pinos agency.

Q. An Indian agency?—A. Yes, sir.

Q. And you were surgeon in the employ of the United States?—A. Yes, sir.

Q. And also postmaster?—A. Yes, sir.

Q. While you were postmaster, did you know the route, 38152, from Ouray to Los Pinos?—A. Yes, sir.

Q. Did you know the route 38146?—A. I did not then know the number of that route, but I knew there was a daily mail run. I have learned since that that was the number of the route.

Q. Now, where did route 38152 run?—A. It ran from Ouray to Los Pinos.

Q. Route 38152 ran from Ouray to Los Pinos. Did it go beyond that?—A. No, sir.

Mr. BLISS. This is the route from which they drew pay for two routes.

Mr. HINE. Who did; Mr. Sanderson did?

Mr. BLISS. I will not say Mr. Sanderson did. Mr. Dorsey got part of it, Mr. Sanderson got a part of it, and several others got a part of it.

Q. There was another route, 38146?—A. Yes, sir; established subsequently.

Q. Where did that run from?—A. I believe it ran from the town of Ouray. I know it went to Lake City, but I do not know where it went beyond that.

Q. From Ouray by Los Pinos?—A. It passed Los Pinos down to Barnum and down to Lake City, and I do not know where it went beyond that.

Q. Therefore, from Los Pinos to Ouray those routes were identical, were they not?—A. Yes, sir.

Q. While you were postmaster on 38152, how many times a week was the service?—A. It arrived once a week, and left once a week.

Q. How as to 38146, the route by Los Pinos to Barnum and Lake City?—A. That was a daily, of course; I knew it was a daily mail, inasmuch as it passed the agency every day, though I had no official information of it.

Q. [Submitting papers to the witness.] Did you, in March, 1879, write the letters which I hand you?—A. I did, sir.

Q. With the inclosures?—A. Yes, sir.

Mr. BLISS. [Submitting papers identified to Mr. Wilson.] I do not want to stop to read these this afternoon, but I want you to see them, because you may like to examine him upon them.

Q. Were the statements in your letter true?—A. Yes, sir.

Q. Who succeeded you as postmaster?—A. Mr. Frank W. Raymond.

Q. Who preceded you as postmaster?—A. Mr. Charles Wheeler.

Q. While you were postmaster, do you know who the postmaster was at Ouray?—A. When I first took charge of the office at Los Pinos Mr. Stoddard was postmaster at Ouray. He was succeeded by Mr. Bragaw, and the next postmaster was Mr. Dunbar.

CROSS-EXAMINATION.

By Mr. WILSON :

- Q. What kind of a place is Los Pinos?—A. The time I was there it was an Indian agency for the Ute Indians.
- Q. Do you remember getting a communication from the department inquiring whether or not the service on route 38152 could not be discontinued, and the offices embraced on 38146?—A. No, sir; I have no recollection of any such communication.
- Q. Do you recollect when the service was discontinued on route 38152?—A. I thought it was discontinued very soon after the establishment of the daily route, but it was not discontinued then, I found out.
- Q. After you found out it was not discontinued, then you communicated that fact to the department, did you?—A. Yes, sir.
- Q. How long after you communicated that fact was it discontinued?—A. I believe it was discontinued perhaps a year or two afterward.
- Q. Do you know who carried the mail on route 38152?—A. Barlow & Sanderson.
- Q. Who carried the mail on route 38146?—A. I do not know, sir. I think there is a letter there from Mr. Sanderson, and he states that he carried that mail—the daily mail.
- Q. Did not Sanderson's stages come around from Garland to get on to Lake City and Ouray?—A. I don't know where they traveled after leaving Lake City.
- Q. But did not the stages from Lake City come around by Barnum & Los Pinos to get to Ouray?—A. Yes, sir.
- Q. That is Barlow & Sanderson's?—A. Yes, sir; Barlow & Sanderson.
- Q. Their stages came around that way?—A. They traveled from Lake City to Barnum, from Barnum to Los Pinos, and from Los Pinos to Ouray.
- Q. Could they cut across with those stages from Lake City to Ouray?—A. No, sir.
- Q. Why not?—A. Because it is a very mountainous country, and nothing but a trail. You can travel by horseback, and they did carry the mail part of the time on horseback on this route from Lake City to Ouray before the establishment of these mails.
- Q. Before they put these coaches on?—A. But the elevation there is between fourteen and fifteen thousand feet.
- Q. So they had to go around in this way in order to get through the passes in the mountains and get down to Lake City?—A. Yes, sir.
- Q. Please give us the name of that pass, because when we come to name the jury will recollect it, although they cannot pronounce it, suppose?—A. I do not recollect of the name.
- Q. The Uncompahgre Mountains?—A. I don't think they went over Uncompahgre Peak.
- Q. But they went through the passes of those mountains?—A. Yes, sir; they call it the San Juan Range.
- Q. Do you know a peak there known as Hurricane Peak?—A. Yes, sir.
- Q. Barlow, Sanderson & Co., were carrying, then, both of these routes, 38152 and 38146?—A. Yes, sir.
- Q. When they came with their coaches around to Los Pinos they took mail on those coaches?—A. On the buck-boards.

Q. They did put a line of coaches on there, did they not?—A. Not in my time. I have heard that they do now.

Q. During your time they were buck-boards?—A. Yes, sir.

Mr. WILSON. That is all.

Mr. BLISS. I have two other witnesses on this route, but I see by the record evidence that if they desire to go away before Thursday next, I can get along without them. I will not detain your honor and the jury any longer to-day.

The COURT. Gentlemen of the jury, we will adjourn until Thursday morning next at 10 o'clock; that will carry us over Sunday and the 4th of July.

At this point (4 o'clock p. m.) the court adjourned until Thursday morning next, July 6, at 10 o'clock.

THURSDAY, JULY 6, 1882.

The court met at 10 o'clock and 7 minutes a. m.

Present, counsel for the Government and for the defendants.

The COURT. Have you closed with the route you last had up, Mr. Bliss?

Mr. BLISS. None of those routes on which I put in testimony on Friday last were thoroughly closed, though I had substantially closed with the oral evidence; I reserved the papers in order to let the witnesses get away.

The COURT. The case has been going on in the papers since we adjourned, I see. I believe they have found a verdict.

Mr. WILSON. The newspapers are getting along first rate with this case.

Mr. BLISS. I offer in evidence first a jacket on route 38113. That was the route I commenced with on Friday morning, and on which I did not put in all the papers:

Date, October 1, 1878.

No. of route, 38113.

Termini of route, Rawlins and White River.

Length of route, 180 miles.

Contractor, John W. Dorsey.

Pay, \$1,700 per annum.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of J. A. Wright (whose post-office address is Laramie City, Wyoming) for service on this route, at \$1,500 per annum from July 1st, 1878, to June 30, 1882, has been filed in this office, and in case of increase of service pay as follows:

Two trips per week, \$2,850 per annum.

Three trips per week, \$4,065 per annum.

Six trips per week, \$8,317 per annum.

BRADY.

[The jacket last read was marked by the clerk 21 L.]

Inclosed in that jacket is a subcontract, made on the ordinary blank form, headed Miner, Peck & Co., reciting that Dorsey is the Government contractor, dated the 1st of May, 1878, with John A. Wright, undertaking to carry the mail on the terms specified in the jacket, with a provision for receiving 25 per cent. of any amount that may be allowed for expedition. It is signed by Dorsey and by Wright.

[The subcontract last offered was marked by the clerk 22 L.]

The next is a jacket dated December 21st, 1878, describing the route and then:

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of M. C. Rerdell, whose post-office address is Rawlins, Carbon County, Wyoming Territory, for service on this route, at \$1,700 per annum from January 15, 1879, to June 30, 1882, has been filed in this office.

BRADY.

[The jacket last read was marked by the clerk 23 L.]

Mr. WILSON. I wish to call the attention of the court to the fact that his subcontract is dated the 1st of May, 1878, and to take exception to the admission of it in evidence.

The COURT. It falls within the rule already made.

Mr. WILSON. Yes, sir; I simply want to note the exception.

Mr. HENKLE. The right to except is reserved all the way through, I understand, on this point, your honor.

The COURT. Yes; certainly.

Mr. BLISS. Inclosed in the last jacket is a subcontract dated the 26th of December, 1878, between John W. Dorsey and M. C. Rerdell, of Rawlins, Wyoming. The said M. C. Rerdell agrees to carry the mail from White River to Rawlins and back once a week, from the 15th of January, 1879, to the 30th of June, 1882, for \$1,700. The provision as to extension of service and increase of trips is stricken out, also the provision as to agreeing to carry employees, and the provision as to expedition. It is printed in and then stricken out. The contract is signed John W. Dorsey, by John R. Miner, his attorney in fact, and M. C. Rerdell.

[The contract last offered was marked by the clerk 24 L.]

The next is a jacket dated January 22, 1879:

From October 1st, 1878, stop all payments to subcontractor, the contractor and subcontractor having asked for a withdrawal of subcontract.

That is the request of Mr. Wright.

[The jacket last read was marked by the clerk 25 L.]

LARAMIE CITY, WYOMING, December 3, 1878.

Hon. THOMAS. J. BRADY,

Second Assistant Postmaster-General:

SIR: The subcontractor on route 38113, having been compelled by financial difficulties to abandon the service on that route, requests permission to withdraw his subcontract from the files of the department from Oct. 1st, 1878.

Respectfully,

JOHN A. WRIGHT,
Subcontractor.

G. W. LANCASTER,
His Attorney in Fact.

I concur in the above request,

JOHN W. DORSEY, M.

[The paper last read was marked by the clerk 26 L.]

The next is a jacket:

Date, Feb'y 7th, 1879. State, Colorado.

No. of route, 38113.

Termini of route, White River and Rawlins.

Length of route, 180 miles.

No. of trips per week, one.

Contractor, John W. Dorsey.

Pay, \$1,700 per annum.

Contractor and subcontractor request withdrawal of subcontract.

From Jan'y 1st, 1879, stop all payment to subcontractor, the contractor and subcontractor having asked for withdrawal of subcontract.

[Order bearing date December 28th, 1878. No. 11380.]

BRADY.

[The paper last read was marked by the clerk 27 L.]

WASHINGTON, D. C., Feb'y 6th, 1879.

Hon. THOS. J. BRADY,
Second Asst. P. M. General :

SIR: We request permission to withdraw subcontract on route 38113, from White River to Rawlins, to date from January 1st, 1879.

Respectfully,

JOHN W. DORSEY,
Contractor.
 M. C. RERDELL,
Subcontractor.

[The paper last read was marked by the clerk 28 L.]

The next is the following jacket :

Date, May 9th, 1879. State, Colorado.

No. of route, 39113, 38142, 45, 152, and 56.

Termini of route, White River and Rawlins, Wyoming.

Length of route, 165 miles. No. of trips per week, three.

Contractor, John W. Dorsey.

Contractor requests change of address.

Change contractor's address to care M. C. Rerdell, box 706, Washington, D. C.

BRADY.

[The jacket last read was marked by the clerk 29 L.]

WASHINGTON, D. C., May 5, 1879.

Hon THOMAS J. BRADY,
Second Assistant Postmaster-General :

SIR: You will please address all communications relating to routes 38113, White River to Rawlins; 38142, Walsenburg to Gardner; 38145, Ojo Caliente to Animas City; 38152, Ouray to Los Pinos; 38156, Silverton to Parrott City; to care M. C. Rerdell, box 706, Washington, D. C.

Respectfully, ,

JOHN W. DORSEY.

[The paper last read was marked by the clerk 30 L.]

The next is a jacket:

Date, November 11, 1879. No. of route, 38113.

Termini of route, White River and Rawlins.

Length of route, 165 miles, D. C. No. of trips per week, three.

Contractor, John W. Dorsey. Pay, \$13,706.25.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of S. W. Dorsey, whose post-office address is Washington, D. C., for service on this route at \$13,706.25 per annum from October, 1879, to June 30, 1882, has been filed in this office subject to fines and deductions.

FRENCH.

[The paper last read was marked by the clerk 31 L.]

Inclosed is the subcontract, dated the 1st of April, 1879, between John W. Dorsey and S. W. Dorsey, reciting that S. W. Dorsey binds himself to carry the mail one trip per week for the annual sum of \$1,700. Should the Post-Office Department extend the route, embrace new offices, or increase the number of trips per week, 100 per cent. pro rata is to be paid to party of the second part for such extension or increase of service, and the foregoing applies to any expedition. It is signed by John W. Dorsey and S. W. Dorsey.

[The paper last read was marked by the clerk 32 L.]

The next is a jacket, as follows :

Date, October 20, 1880. State, Colorado.

No. of route, 38113. Termini of route, Rawlins and White River.

Length of route, 165 miles. No. of trips per week, three.

Contractor, John W. Dorsey. Pay, \$13,706.25.

Subcontractor, S. W. Dorsey. Pay, \$13,706.25.

Contractor and subcontractor request the withdrawal of subcontract.

From October 1st, 1880, stop all payments to subcontractor, the contractor and subcontractor having requested the withdrawal of subcontract.

BRADY.

[The paper last read was marked by the clerk 33 L.]

M. C. Rerdell, Agt. Box 706.]

WASHINGTON, D. C., October 19, 1880.

Hon. THOS. J. BRADY,

Second Assistant P. M. General:

SIR: We have the honor to request that the subcontract of S. W. Dorsey, on route 38113, Rawlins to White River, Colorado, be withdrawn from the files of your office, as he is no longer subcontractor on said route. Said withdrawal to take effect from October, 1st, 1880.

Respectfully,

J. W. DORSEY,

Contractor.

S. W. DORSEY,

Subcontractor.

[The paper last read was marked by the clerk 34 L.]

WHITE RIVER POST-OFFICE,
SUMMIT COUNTY, COLORADO.

SECOND ASSISTANT POSTMASTER-GENERAL, *Washington, D. C.:*

SIR: Route 38113, from White River, Colo., to Rawlins, Wyoming, is through a rough, mountainous region, in which the snow falls very deep, and already on some parts of the route it is now from 15 to 18 inches in depth, which makes it almost impossible for the carriers to get through on the schedule time.

I would suggest that the time which is now five days be increased to six days during the winter, and that in the future it be permanently fixed at five days for the months of May, June, July, August, September, and October, and at six days for the months of November, December, January, February, March, and April.

Very respectfully, yours, etc.,

WILLIAM H. POST, *P. M.*

The letter is not dated. It is stamped as received at the Post-Office Department January 22, 1879, and that is the indorsement on the back.

[The paper last read was marked by the clerk 35 L.]

I will now read the warrants:

Warrant No. 11920, dated November 12, 1878, to the order of Benjamin U. Keyser, president of the German-American National Bank, assignee of John W. Dorsey, for \$332.38.

Warrant No. 11921, dated November 12, 1878, in favor of H. M. Vaile, assignee of John W. Dorsey, for \$48.54. Annexed an account with this route showing \$425 due for the quarter ending September 30, 1878, with a deduction, \$375 being stated as the subcontractor's pay and \$54.16 as charged per order No. 9384. Order dated October 1, 1878, pay H. M. Vaile, or order, \$137, out of any moneys due on certain routes, this one being specified for the quarter ending September 30, 1878. Signed by John W. Dorsey and witnessed by J. W. Raymond and C. S. Lounsbury, Bismarck, Dakota.

Warrant No. 11365, dated November 4, 1878, in favor of J. A. Wright, subcontractor, for \$326.52. An account annexed with the route showing a net balance due of \$326.52. Annexed a notification dated October 1, 1878, in the ordinary form of the filing of the subcontract of J. A. Wright, signed by Brady.

Warrant No. 14371, dated January 30, 1879, in favor of H. M. Vaile, assignee of John W. Dorsey, for \$700.09. An account annexed, showing *due on this route for the quarter ending December 31, 1878, \$425.*

Warrant No. 6969, dated August 1, 1879. Pay Middleton & Co., assignees of John W. Dorsey, \$2,463.06. An account annexed showing due on this route for the quarter ending June 30, 1879, \$425. And additions making \$1,649.21, amount paid subcontractor, \$982.14. Order dated May 5, 1879. Please pay S. W. Dorsey, or order, the sum of \$1,086.88, out of any moneys due on route 38113 for the quarter ending June 30, 1879. Signed by John W. Dorsey.

Warrant No. 7840, dated August 12, 1879. Pay Charles F. Perkins, subcontractor, \$204.32. Account annexed, showing due per quarter, \$625. Due additional, \$357.14. Total, \$982.14; less fines and deductions, \$778.82, leaving \$204.32 due.

Warrant No. 12291, dated December 17, 1879. Pay Middleton & Co., assignees of John W. Dorsey, \$2,687.64. An account showing due on this route \$3,426.56, less \$651.31 for subcontractor's pay, and \$87.56 for deductions. An order annexed, dated October 1, 1879, to pay Middleton & Co. \$3,426.56 out of any moneys due on route 38113. Signed by John W. Dorsey.

Warrant No. 12397, dated December 17, 1879. Pay C. F. Perkins, subcontractor, \$629.47. An account annexed showing \$629.47 due after deducting \$21.89 fines and deductions.

Warrant No. 8311, dated August 6, 1880. Pay J. W. Bosler, assignee of John W. Dorsey, \$5,180.78. An account annexed showing due for the quarter ending June 30, 1879, \$10,279.68, less \$5,098.90, described as the amount charged by various orders, and as deductions. Amount charged per order No. 38160, \$183.44. Amount charged per order No. 12548, \$625. Amount charged per order No. 4805, \$1,052.36. Deduction, July 26, 1879, \$696.36. Remitted to subcontractor and charged to contractor. Deduction fourth quarter of 1879, \$833.69. First quarter of 1880, \$1,098.38. Second quarter, \$609.70. Subcontractor paid. Annexed an order without date to pay J. W. Bosler \$3,426.56, out of any money due on this route for the quarter ending June 30, 1880. Signed by John W. Dorsey. Annexed also another order, without date, to pay S. W. Dorsey, or order, the sum of \$3,426.56 out of any moneys due on this route. Signed by John W. Dorsey, and indorsed by S. W. Dorsey. Annexed also an order dated October 7, 1879, to pay S. W. Dorsey \$3,426.56 out of any moneys due on route 38114, for the quarter ending December 31, 1879. Signed by John W. Dorsey, and witnessed by M. C. Rerdell and P. F. Chapman. Indorsed by S. W. Dorsey.

Draft No. 4530, dated March 27, 1880, for \$558.92, upon the postmaster of Newark, New Jersey. An account stated annexed, describing it as follows: This payment being part of the deduction of July 26, 1879, charged to subcontractor in settlement of the second quarter of 1879, and now made chargeable to contractor, as per accompanying letter of the Second Assistant Postmaster-General, dated March 26, 1880:

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER GENERAL,
INSPECTION DIVISION,
Washington, D. C., March 26, 1880.

SIR: It having been represented to this office that the whole amount of the deduction ordered from the pay of the contractor on route 38113, from White River to Rawlins, for failures in the quarter ended June 30, 1879, viz, \$777.82, was deducted from the pay of the subcontractor in the statement of account by your office, and whereas it appears upon examination of the contract by and between the said contractor and subcontractor that no stipulation is found therein binding said subcontractor to perform service on expedited schedule time, it would clearly appear that only so much of said deduction for failure in the quarter ended June 30, 1879, should be charged to

the subcontractor (Perkins), as results from failure to perform five (5) half trips between the 12th day of May and the 19th day of May, 1879, viz: Two hundred and eighteen dollars and ninety cents (\$218.90).

Very respectfully, etc.,

THOMAS J. BRADY,
Second Assistant Postmaster-General.

Hon. J. M. MCGREW,
Auditor of the Treasury for the Post-Office Department, Present.

Warrant No. 11326 dated October 26, 1880. Pay J. W. Bosler, assignee of John W. Dorsey, \$6,224.60. Warrant No. 11327, dated October 26, 1880. Pay to John W. Dorsey \$131.29. Indorsed by Dorsey and M. C. Rerdell. An account annexed showing due on this route \$3,426.56. A memorandum below Sub. paid, but no amounts carried out. Annexed an order dated July 10, 1880. Pay to J. W. Bosler or order out of any moneys due on various specified routes, including 38113, for the quarter ending September 30, 1880. Signed by John W. Dorsey, contractor.

Warrant No. 2817, dated February 4, 1881, in favor of J. W. Bosler, assignee of John W. Dorsey, for \$4,107.74. Also another warrant No. 3818, dated February 4, 1881. Pay to J. W. Bosler \$179.74. Annexed, an account showing \$3,426.50 due upon this route. Amount paid subcontractor, \$2,119.57. An order annexed, dated October 1, 1880, to pay J. W. Bosler \$926.56, or the whole amount found due on route 38113, for the quarter ending December 31, 1880. Signed by John W. Dorsey.

Draft No. 9278, dated April 23, 1881, on the postmaster at Harrisburg. Pay to J. W. Bosler, assignee, \$3,998.42. An account annexed, showing due on this route \$3,426.56, of which the amount paid the subcontractor is \$2,500. Annexed, an order signed by Dorsey, in the ordinary form to pay Bosler.

Draft No. 9270, upon the postmaster at Denver, Colorado. Pay Eugene Taylor, subcontractor, or order, \$2,441.03. Draft No. 9272, upon the same postmaster, in favor of J. L. Sanderson. I suppose that has no connection with this route. Annexed an account stated, showing due Eugene Taylor \$2,500, less \$58.97 deduction.

Account without warrant, showing due on this route for the quarter ending June 30, 1881, per contract, \$3,426.56, and by additional amount, \$4,568.35. An order annexed, dated May 10, 1881, signed by Dorsey, to pay \$1,736.98, money due on this route to J. W. Bosler.

Draft No. 1034, dated August 6, 1881, on the postmaster at Denver, in favor of Eugene Taylor, for \$5,833.33. An account stated with Eugene Taylor, subcontractor, showing \$2,550 due per contract, and an additional amount of \$3,333.33.

An account without warrant, showing due on this route, \$5,833.33 for the quarter ending September 30th, 1881.

An account without warrant on this route, showing for the quarter ending December 31st, 1881, due, \$15,990.62; less per order No. 12909, \$6,720.30; leaving a balance of \$9,270.31, plus one month's extra pay, \$566.67. From that is deducted \$336.01 fines and deductions, and \$1,410.20 paid for temporary service.

Account without warrant for the quarter ending December 31st, 1881, showing due to October 6th, 1881, \$380.43; less, \$319.77; \$60.66 to the subcontractor, Eugene Taylor.

I now offer the table of productiveness on route 38113, Rawlins to White River, Colo., from July 1st, 1878, to June 30th, 1881.

Form of certificate.

[F.]

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, J. H. Ela, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this office, showing the gross and the net revenues of the post-offices located on route No. 38113, Rawlins to White River, Colorado, from July 1st, 1878, to June 30th, 1881.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, this 12th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.]

J. H. ELA, Auditor.

Name of office.	Quarter.	Gross revenue.	Net revenue.	Credits.
White River, Colorado (name changed to Meeker, August 26, 1880); also on route 37113.	3 qr., 1878..	\$10 23	\$0 39	.....
	4 " " ..	13 33	70	.....
	1 " 1879..	15 31	1 20	.....
	2 " " ..	10 01	85 46	.....
		49 88	2 29	5 46
	3 qr., 1879..			.....
	4 " " ..	130 05	52 44	.....
	1 " 1880..	240 05	114 27	.....
	2 " " ..	132 35	15 30	.....
		502 45	182 01	.....
	3 qr., 1880..			.....
	4 " " ..	292 83	77 61	.....
	1 " 1881..	226 52	83 37	.....
	2 " " ..	250 47	74 99	.....
		769 82	235 97	.....
Windsor, Colorado; discontinued July 19, 1880; also on route No. 38112.	3 qr., 1878..			.....
	4 " " ..	32	32	.....
	1 " 1879..	8 31	3 02	.....
	2 " " ..	32 44	27 02	.....
		41 07	30 36	.....
	3 qr., 1879..	4 00		4 29
	4 " " ..			.....
	1 " 1880..			.....
	2 " " ..			.....
		4 00		4 29
	3 qr., 1878..			.....
	4 " " ..			.....
Baggs, Wyoming; established Feb'y 12, 1879; discontinued April 30, 1879; re-established Nov. 24, 1879; also on route 38112.	1 " 1879..			.....
	2 " " ..			.....
	3 qr., 1879..			.....
	4 " " ..			.....
	1 " 1880..			.....
	2 " " ..	139 40	34 45	.....
		139 40	34 15	.....
	3 qr., 1880..	49 06		14 59
	4 " " ..	85 14	31 83	.....
	1 " 1881..	62 30	2 63	.....
	2 " " ..	73 91	23 91	.....
		270 41	58 42	14 59
		Less credits...	14 59	.....
			43 83	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Dixon, Wyoming; discontinued Nov. 28, 1879; also on route No. 37121.	3 qr., 1878..	\$15 50	.....	\$9 29	.....
	4 " " ..	25 16	.....	13 86	.....
	1 " 1879..	31 48	.....	14 76	.....
	2 " " ..	30 93	.....	12 62	.....
		103 07	.....	49 53	.....
	3 qr., 1879..	62 14	.....	45 32	.....
	4 " " ..	70 29	.....	43 81	.....
	1 " 1880..		.....		.....
	2 " " ..		.....		.....
		132 43	.....	89 13	.....
	3 qr., 1880..		.....		.....
	4 " " ..		.....		.....
	1 " 1881..	26 92	.....	20 08	.....
	2 " " ..	32 03	.....	63	.....
		58 95	.....	20 71	.....
Rawlins, Wyoming; supplied by railroad and on route 37113.	3 qr., 1881..	693 51	.....	443 51	.....
	4 " " ..	498 56	.....	284 87	.....
	1 " 1879..	498 68	.....	239 45	.....
	2 " " ..	382 02	.....	197 71	.....
		2, 072 75	.....	1, 165 54	.....
	3 qr., 1879..	410 40	.....	227 79	.....
	4 " " ..	689 74	.....	439 74	.....
	1 " 1880..	520 90	.....	276 97	.....
	2 " " ..	590 32	.....	342 28	.....
		2, 211 36	.....	1, 288 78	.....
	3 qr., 1880..	639 42	.....	389 42	.....
	4 " " ..	747 64	.....	497 64	.....
	1 " 1881..	539 02	.....	289 02	.....
	2 " " ..	572 53	.....	247 55	.....
		2, 498 63	.....	1, 423 63	.....

[The paper just offered was submitted to the clerk to be marked for identification, and was by him marked 54 L.]

I believe that is all, sir, on that route. It is rather late in the day, sir, but a map of this route has just come in. I do not know that it will be of any service. [Distributing maps.]

The COURT. What is the next route?

Mr. BLISS. I am going to complete Vermillion to Sioux Falls and the Los Pinos route.

Mr. TOTTEN. That is 38152.

Mr. BLISS. 38152 I think, sir.

LOS PINOS, GUNNISON COUNTY, COLORADO,
18th March, 1879.

CONTRACT OFFICE, INSPECTION DIVISION, P. O. DEPARTMENT,
Washington, D. C. :

SIR: I have the honor to submit the following report regarding the matter of the transportation of the mails on route No. 38152 :

"The registers of arrivals and departures" sent by me to the department show that the mail was regularly carried on this route up to the 12th day of October, 1878. At this date a daily mail was established (viz, route number 38146) which stopped at this office twice every day, once on its way from Lake City to Ouray, and once on its way from Ouray to Lake City. Seeing that the route No. 38152 was now quite superfluous I very naturally supposed that it was discontinued. Accordingly I ceased sending in the "registers of arrival and departure" until called upon by the department to

render them. I then reported that no mail had been carried on the route, and I understand that the postmaster at Ouray, Colorado, made a similar report, showing that he also was of opinion that the route in question had been discontinued.

On the 27th of January, 1879, I received from Messrs. Barlow and Sanderson the inclosed letter marked "A."

A copy of my reply to Messrs. Barlow and Sanderson is inclosed herewith marked "B."

Another letter received by me from Messrs. Barlow and Sanderson, dated February 8th, 1879, is inclosed herewith marked "C."

A "register of arrivals and departures" for route No. 38152, was submitted for the month of February, 1879, the time being, of course, the same as it would have been if making a report for route No. 38146.

I respectfully request instructions as to whether or not my reports of arrival and departures for the month of November and December, 1878, shall be corrected, and whether or not I am required to submit a report for the month of January, 1879.

In this connection I would respectfully state that this being merely a way station, no record of time of arrival and departure on route No. 38146 has been kept by me.

Very respectfully, your obedient servant,

A. J. McDONALD, P.M.

That letter is dated March 18, 1879, and was marked "4 M." on Friday. It is the route on which by change in the route they made two routes going over precisely the same territory, and their attention was called to it, and they still continued to pay for the service.

The COURT. That is a letter of McDonald's?

Mr. BLISS. Yes, sir.

The COURT. He was here?

Mr. BLISS. He was here for the purpose of identifying the letter, but for the purpose of saving time I did not read it on Friday because I wanted to get the witnesses on the stand. I now read another paper inclosed in it. Which is as follows:

OFFICE OF BARLOW & SANDERSON'S STAGE AND EXPRESS LINE,
Pueblo, January 21st, 1879.

POSTMASTER, *Los Pinos*:

DEAR SIR: I inclose you herewith order from contractor on route No. 38152, to deliver all the U. S. mail to me. We have been transporting the mail for past W. on this route, and if you have not already, will you please notify P. O. Department date we commenced service, and that service has been performed up to January 1st, 1879. And please continue to deliver mail to our subcontractor as per inclosed order.

Truly, yours,

J. L. SANDERSON,
Of BARLOW & SANDERSON.

That is indorsed:

Received at Los Pinos Agency, Colorado, on the 27th of January, 1879.

Annexed to that is an order as follows:

POSTMASTER AT LOS PINOS:

Please to deliver the U. S. mail on route No. 38152 to J. L. Sanderson, or order, from Nov. 15th, 1878, until otherwise ordered.

JNO. W. DORSEY,
Contractor.

Branch office, Washington, D. C.
Address, lock-box 714.

Mr. WILSON. Have you offered to introduce the Barlow and Sanderson subcontract?

Mr. BLISS. I have not. Another paper inclosed is a copy of a letter, which is as follows:

LOS PINOS, GUNNISON COUNTY, 27th January, 1879.

To J. L. SANDERSON, Esq.,
Pueblo, Colo.:

DEAR SIR: I have to acknowledge receipt of your communication of the 21st inst.

enclosing an order from the contractor on route 38152, to deliver all U. S. mail to you.

In your letter you say that you have been transporting the mail for the past quarter, &c. In this connection I have to inform you that the P. O. Department has already been notified by me that no trips were made during the months of November and December on said route.

Prior to the establishment of the daily mail in this section of the country, I received from Mr. Dorsey an order to deliver the U. S. mail on route No. 38152 to John B. Elliott.

As soon as the daily mail commenced to run the weekly mail (i. e., route No. 38152) stopped, and, as I supposed, was discontinued. The postmaster at Ouray was certainly under the same impression.

Seeing that Los Pinos is one termination of the route, it would, in my judgment, have prevented confusion had you notified me at the time the change was made.

Nothing has been received from the P. O. Department at Washington to acquaint this office with the official number of the route on which the daily mail is carried, nor the name of the contractor; but from your note I conjecture that Messrs. Barlow & Sanderson are the contractors, and that it is intended that on the arrival of the mail on Fridays, and on its departure on Saturdays, I should regard it as traveling on route No. 38152. Am I right?

If I can be of any service to you in regulating this matter, please so notify me.

Respectfully,

A. J. McDONALD.

[The two papers last read had been previously marked, respectively, 3 M. and 5 M.]

Also inclosed in the same letter is the following:

OFFICE OF BARLOW & SANDERSON, STAGE AND EXPRESS LINE.

Pueblo, Feb'y 8th, 1879.

A. J. McDONALD, Esq.,

P. M. Los Pinos:

DEAR SIR: I am just in receipt of your welcome letter of January 27th. Service on route 38152, Los Pinos to Ouray, has never been discontinued, and since daily service has been performed via Los Pinos to Ouray, on route 38146, we have been transporting the mail for both routes. L. Voorhees is contractor on route 38146, and we are subcontractors.

We are also subcontractors on route 38152, and we would like you to make out in duplicate certificates certifying that contractor on route No. 38152 transported mail regularly and according to schedule for quarter ending December 31, '78, and send duplicate to us here and original to P. O. Department. By attending to this soon as possible you will oblige us.

Truly yours,

BARLOW AND SANDERSON.

[The letter just read had been previously marked by the clerk 2 M.]
Mr. Wilson asked for the subcontract of J. L. Sanderson. I will now put it in.

The next is a jacket, and is, as follows:

Date, May 12th, 1880. State, Colo.

No. of route, 38152.

Termini of route, Ouray and Los Pinos.

Length of route, 25 miles.

Number of trips per week, one.

Contractor, J. W. Dorsey.

Pay, \$348 per annum.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of J. L. Sanderson (whose post-office address is St. Louis, St. Louis Co., Mo.) for service on this route at \$348 per annum, subject to fines and reductions, from April 1st, 1880, to June 30th, 1882, has been filed in this office.

BRADY.

[The jacket last read was submitted to the clerk to be marked, and was by him marked 6 M.]

The next is the subcontract of J. L. Sanderson with John W. Dorsey:

Now, this indenture witnesseth that on this 11th day of May, 1880, John W. Dorsey,

party of the first part, and J. L. Sanderson, making the party of the second part, have agreed as follows, to wit:

The said J. L. Sanderson and his sureties, party of the second part, do jointly and severally undertake, covenant, agree, and do bind themselves to transport the U. S. mails on route No. 38152, from Ouray to Los Pinos, one trip per week, from the 1st day of April, 1880, to the 30th day of June, 1882.

One trip a week \$348, pro rata on all increases. It is signed by John W. Dorsey, United States Government contractor, by M. C. Rerdell, his attorney in fact, and by J. L. Sanderson, subcontractor.

[The contract just referred to was submitted to the clerk to be marked, and was by him marked 7 M.]

The next are the warrants. Warrant No. 3468, dated April 30, 1879. Pay H. M. Vaile, assignee of John W. Dorsey, \$515.25, with account annexed showing due upon route 38152 \$87. Annexed is an order dated October 1, 1878, to pay to H. M. Vaile, or order, the sum of the entire amount due upon certain specified routes, including 38152 for the quarter ending March 31, 1879. Signed J. W. Dorsey; witnessed by M. C. Rerdell, Griffith, and Armstead.

Warrant 6491, dated July 29, 1879. Pay to Louis Johnson & Company, assignee of John W. Dorsey, \$87. Annexed is the account stated on route 38152, showing \$87 due. Annexed is the order to pay to H. M. Vaile, or order, the amount due on this route for the quarter ending June 30, 1879. Signed by John W. Dorsey and witnessed by P. F. Chapman and A. S. Tracy.

Warrant 10393, dated November 10, 1879. Pay to John W. Dorsey \$87; indorsed by John W. Dorsey and M. C. Rerdell. Annexed is the account, showing \$87 due upon this route.

Warrant 2671, dated March 1, 1880. Pay to Louis H. Johnson & Company, assignee of John W. Dorsey, \$134.

Warrant No. 2672, dated March 1, 1880. Pay to J. W. Bosler, assignee of John W. Dorsey, \$818.20, showing amount due on route 38152, \$87. Annexed is an order dated January 2, 1880, to pay M. C. Rerdell, or order; witnessed by P. F. Chapman and A. S. Tracy; indorsed by M. C. Rerdell.

Mr. WILSON. Read the indorsement.

Mr. BLISS. [Reading.] "Pay Middleton, or order. M. C. Rerdell." Below, "J. L. Sanderson." I suppose it is, yet I wouldn't swear to it unless you told me so.

Warrant No. 8316, dated August 6, 1880; pay to John W. Dorsey \$87. Indorsed, "Pay M. C. Rerdell, or order; John W. Dorsey." Then, signed "M. C. Rerdell;" and, then, a signature that I would not pretend to decide about. It looks more like Middleton & Company than Sanderson. I think the other is the same way.

[The warrants just read from were submitted to the clerk to be marked for identification, and were by him marked respectively from 8 M to 12 M, both inclusive.]

Warrant No. 1206, dated November 9, 1880, in favor of J. L. Sanderson, subcontractor, \$17.50. Indorsed by Sanderson. Also warrant 1207, dated November 9, 1880. Pay A. H. Brown, assignee of John W. Dorsey, \$29. Indorsed by Brown. Account annexed showing due per contract, \$43.50, and a month's extra pay, \$29. Annexed an order to pay A. H. Brown \$29 on account of that route.

The COURT. There never was any expedition on that route?

Mr. BLISS. No, sir; there never was any expedition on that route.

Mr. WILSON. Nor any increase, your honor.

Mr. BLISS. No.

The COURT. No.

ATTEN. If the court please, the only charge in the indictment in connection is that on that 1st of August, 1880, a fraudulent order was made discontinuing the service, and that the allowance of one extra pay was made, and that on the fifteenth of August they actually applied for this pay and received it. That is all there is in the indictment about this route. It is only twenty-five miles long.

COURT. They have endeavored to prove that they got pay for a year when there was no service performed, as I understand it.

ENKLE. The pay was received by a party named Sanderson, not a party to this indictment.

COURT. He might be a conspirator, although not named in the indictment.

ENKLE. That has not been charged.

ATTEN. We do not say he is a conspirator.

LISS. I think that is all there is on that route.

COURT. Dorsey was the contractor, though.

LISS. J. W. Dorsey was the contractor.

WILSON. Sanderson was the subcontractor, and got the whole thing.

LISS. That is not in evidence yet, and I have been unable to find any evidence of it.

COURT. Some of it seems to have passed through Rerdell's hands. The warrants were payable to Rerdell.

LISS. I will now put in the record of productiveness from Vermillion to Sioux Falls. It is as follows :

Form of certificate.

[F.]

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, J. H. ELA, Auditor of the Treasury for the Post-Office Department, do hereby certify that the foregoing is a true and correct statement from the records of this office, showing the gross and net revenues of the post-offices located on route No. 350151 from Vermillion to Sioux Falls, Dakota, from July 1, 1878, to June 30, 1881, and the money whereof I have hereunto signed my name, and caused to be affixed my seal, at the city of Washington, this 12th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

J. H. ELA.
Auditor.

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Dakota; supplied by railroad, Vermillion and Dakota, division of, the Great Northern and Saint Paul Railroad.	3 qr., 1878..	\$478 28	.....	\$23 68	.....
	4 " " ..	531 52	.....	81 52	.....
	1 " 1879..	505 32	.....	55 32	.....
	2 " " ..	699 88	.....	249 83	.....
		2, 215 35	.....	415 35	.....
	3 qr., 1879..	606 10	.....	156 10	.....
	" " " ..	715 04	.....	265 04	.....
	1 " 1880..	672 70	.....	222 70	.....
	2 " " ..	436 33	.....		\$13 67
		2, 430 17	.....	648 84	.....
			Less credit....	13 67	.....
				630 17	.....
	3 qr., 1880..	521 88	.....	121 88	.....
	4 " " ..	483 36	.....	90 80	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Greenfield, Dakota; omitted from route March 1, 1881.	1 qr., 1881..	\$415 36	.....	\$22 86	.....
	2 " " ..	393 90	.....	1 40	.....
		<u>\$1,814 50</u>	.....	<u>237 00</u>	.....
	3 qr., 1878..	21 65	.....	10 28	.....
	4 " " ..	12 75	.....	4 64	.....
	1 " 1879..	7 52	.....	2 82	.....
	2 " " ..	15 50	.....	6 56	.....
		<u>57 42</u>	.....	<u>24 54</u>	.....
	3 qr., 1879..	11 15	.....	4 00	.....
	4 " " ..	9 65	.....	3 32	.....
	1 " 1880..	8 90	.....	3 07	.....
	2 " " ..	10 30	.....	3 72	.....
		<u>40 00</u>	.....	<u>14 12</u>	.....
	3 qr., 1880..	5 09	.....	2 28	.....
	4 " " ..	7 09	.....	2 84	.....
	1 " 1881..	5 34	.....	2 12	.....
	2 " " ..	3 23	.....	1 20	.....
		<u>21 36</u>	.....	<u>8 53</u>	.....
Aleen, Dakota; omitted from route March 1, 1881.	3 qr., 1878..	2 20	.....	92	.....
	4 " " ..	2 72	.....	1 09	.....
	1 " 1879..	7 81	.....	3 11	.....
	2 " " ..	6 07	.....	2 97	.....
		<u>18 80</u>	.....	<u>8 09</u>	.....
	3 qr., 1879..	6 68	.....	2 08	.....
	4 " " ..	5 74	.....	2 28	.....
	1 " 1880..	16 84	.....	16 23	.....
	2 " " ..	10 03	.....	4 75	.....
		<u>39 28</u>	.....	<u>26 54</u>	.....
	3 qr., 1880..	4 40	.....	4 68	.....
	4 " " ..	5 00	.....	2 00	.....
	1 " 1881..	5 20	.....	2 02	.....
	2 " " ..	6 22	.....	2 50	.....
		<u>20 62</u>	.....	<u>8 26</u>	.....
	3 qr., 1878..	2 00	.....	1 28	.....
	4 " " ..	3 63	.....	2 00	.....
	1 " 1879..	5 75	.....	2 08	.....
	2 " " ..	6 01	.....	2 50	.....
		<u>17 39</u>	.....	<u>8 36</u>	.....
Brighton, Dakota; omitted from route March 1, 1880.	3 qr., 1879..	6 00	.....	3 30	.....
	4 " " ..	8 76	.....	3 00	.....
	1 " 1880..	4 76	.....	2 00	.....
	4 " " ..	44 25	.....	41 25	.....
		<u>64 37</u>	.....	<u>50 15</u>	.....
	3 qr., 1880..		.....		\$2 94
	4 " " ..		.....		4 06
	1 " 1881..		.....		2 10
	2 " " ..		.....		3 45
			All credits..		<u>12 57</u>
	3 qr., 1878..	14 63	.....	8 21	.....
	4 " " ..	14 29	.....	5 75	.....
	1 " 1879..	12 25	.....		3 61
	2 " " ..	23 36	.....	14 08	.....
		<u>64 53</u>	.....	<u>28 04</u>	.....
			Less credits..		<u>3 61</u>
					<u>24 73</u>
Sunnyside, Dakota; omitted from route March 1, 1881.	3 qr., 1878..	14 63	.....	8 21	.....
	4 " " ..	14 29	.....	5 75	.....
	1 " 1879..	12 25	.....		3 61
	2 " " ..	23 36	.....	14 08	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
Dakota; also supplied by route 12.	3 qr., 1879..	\$24 75		\$15 70	
	4 " " ..	20 70		11 03	
	1 " 1880..	25 73		21 77	
	2 " " ..	27 02		21 50	
		120 00		70 00	
	3 qr., 1880..	27 75		15 72	
	4 " " ..	34 00		23 20	
	1 " 1881..	17 00		10 99	
	2 " " ..	41 20		30 40	
		120 75		80 31	
	3 qr., 1878..	10 15		4 94	
	4 " " ..	8 64		2 91	
	1 " 1879..	16 30		9 39	
	2 " " ..	12 94		6 01	
		48 00		23 55	
	3 qr., 1879..	6 23		3 88	
	4 " " ..	9 09		3 38	
	1 " 1880..	17 37		8 50	
	2 " " ..	6 72		3 52	
		40 40		15 02	
	3 qr., 1880..	8 75		5 44	
	4 " " ..	3 45			40 25
	1 " 1881..	11 40		7 92	
	2 " " ..	4 23		1 11	
Dakota		27 00		14 47	25
			Less credit ..	25	
				14 22	
	3 qr., 1878..				1 14
	4 " " ..	10 30		10 14	
	1 " 1879..	1 50			2 41
	2 " " ..	3 08		1 37	
		23 00		17 51	3 55
			Less credits ..	3 55	
				13 96	
	3 qr., 1879..	8 84		4 20	
	4 " " ..	12 15		6 23	
	1 " 1880..	11 04		5 25	
	2 " " ..	10 05		5 94	
		43 00		21 53	
	3 qr., 1880..	12 34		5 70	
	4 " " ..	10 00		9 72	
	1 " 1881..	3 70			1 01
	2 " " ..	14 40		9 06	
		45 53		25 00	1 01
				1 01	
				23 28	
Dakota.....	3 qr., 1878..	1 74		20	
	4 " " ..			20	
	1 " 1879..	5 42		2 30	
	2 " " ..	6 25		2 91	
		16 20		6 45	
	3 qr., 1879..	7 00		2 49	
	4 " " ..	10 99		5 09	
	1 " 1880..	9 30		4 23	
	2 " " ..	9 37		3 44	
		26 84		15 78	

Name of office.	Quarter.	Gross revenue.		Net revenue.	Charges.
	3 qr., 1880..	87 29	.....	62 93	.....
	4 " " ..	7 59	.....	3 92	.....
	1 " 1881..	11 61	.....	8 56	.....
	2 " " ..	8 24	.....	4 46	.....
		34 73	.....	19 67	.....
Maple Grove, Dakota	3 qr., 1878..	84 95	.....	60 74	.....
	4 " " ..	56 85	.....	36 15	.....
	1 " 1879..	57 10	.....	30 10	.....
	2 " " ..	42 45	.....	21 00	.....
		241 35	.....	148 03	.....
	3 qr., 1879..	50 19	.....	25 00	.....
	4 " " ..	51 20	.....	34 10	.....
	1 " 1880..	54 24	.....	40 00	.....
	2 " " ..	63 24	.....	51 31	.....
		218 87	.....	150 43	.....
	3 qr., 1880..	19 25	.....	10 20	.....
	4 " " ..	18 75	.....	10 86	.....
	1 " 1881..	14 17	.....	9 90	.....
	2 " " ..	9 71	.....	5 32	.....
		61 88	.....	36 26	.....
Worthing, Dakota	3 qr., 1878..	.....	No account ..	.....	.....
	4 " " ..	.....	.....	.....	.....
	1 " 1879..	.....	.....	.....	.....
	2 " " ..	.....	.....	.....	.....
	3 qr., 1879..	.....	.....	.....	.....
	4 " " ..	.....	.....	.....	.....
	1 " 1880..	18 42	.....	11 48	.....
	2 " " ..	44 58	.....	32 29	.....
		63 00	.....	43 77	.....
	3 qr., 1880..	8 05	.....	.....	84 04
	4 " " ..	43 60	.....	26 84	.....
	1 " 1881..	13 44	.....	5 75	.....
	2 " " ..	36 49	.....	21 02	.....
		101 58	.....	53 61	.....
			.....	4 04	.....
			.....	49 57	.....
Prairie Grove, Dakota ; established July 29, 1878; discontinued March 8, 1880.	3 qr., 1878..	.....	.....	.....	.....
	4 " " ..	5 08	.....	5 08	.....
	1 " 1879..	.....	.....	.....	.....
	2 " " ..	.....	.....	.....	.....
		5 08	.....	5 08	.....
	3 qr., 1879..	9 97	.....	8 35	.....
	4 " " ..	2 32	.....	97	.....
	1 " 1880..	4 73	.....	2 16	.....
	2 " " ..	.....	.....	.....	.....
		17 02	.....	11 42	.....
Sioux Falls, Dakota ; supplied by routes No. 35012, 35019, 35030, 35031, 35032, and 35034; also on railroad; omitted from route April 1, 1880.	3 qr., 1878..	853 93	.....	558 93	.....
	4 " " ..	1,046 65	.....	751 65	.....
	1 " 1879..	1,020 54	.....	600 54	.....
	2 " " ..	1,264 83	.....	844 83	.....
		4,185 95	.....	2,755 95	.....
	3 qr., 1879..	1,179 14	.....	729 14	.....
	4 " " ..	1,353 69	.....	963 69	.....
	1 " 1880..	1,627 92	.....	1,175 72	.....

Name of office.	Quarter.	Gross revenue.		Net revenue.	Credits.
	2 qr., 1880..	\$1,463 96	.....	\$932 96	.....
		5,624 01	.....	3,747 51	.....
	3 qr., 1880..	1,586 67	.....	1,060 42	.....
	4 " " ..	1,581 00	.....	1,063 50	.....
	1 " 1881..	1,290 18	.....	772 68	.....
	2 " " ..	1,402 23	.....	884 73	.....
		5,860 08	.....	3,781 33	.....

(The paper last offered was submitted to the clerk to be marked for identification, and was by him marked 1 N.)

On the route from Ouray to Los Pinos I should have put in jacket dated August 3, 1880, with the order indorsed:

From August 15th, 1880, discontinue service, and allow contractor one month's extra pay.

BRADY.

[The jacket just offered was submitted to the clerk to be marked for identification, and was by him marked 14 M.]

Mr. MERRICK. There is an error in the printed record on the Ojo Caliente route, at page 814. Your honor will observe a jacket offered by Mr. Bliss, according to the printed record, was represented as having indorsed upon it as follows: "April 12th, 1879." That April 12th should be April 29th.

The COURT. The jacket will show for itself.

Mr. MERRICK. I have had the jacket and examined it this morning.

Mr. WILSON. Where is it?

Mr. MERRICK. It is in this bag here. [Indicating.] I stated the other day that the letter from Anthony Joseph to Thomas J. Brady representing the impossibility of carrying the mail on that route in fifty hours was before Brady when he ordered the fifty hours, and it was replied by Mr. Totten that I was mistaken, and that that letter was not before him until after he had made the order. Upon an examination I find that that order was made on the 29th of April to take effect on the 12th day of May; that the letter was written April 2, 1879, and is indorsed as received at the department April 14, 1879.

The COURT. I do not remember your dispute about it. The time for a question of fact will be hereafter.

Mr. MERRICK. I call your honor's attention to it. I took it for granted that Mr. Totten was right, but in looking over the case during the recess of the court I was surprised to find the order dated on the 12th of April, and that the petitions for the increase had not been filed until after the 12th of April, and I did not understand how that was, and I telegraphed down from my place in the country to the Post-Office Department to know how it was, and they telegraphed back that they found upon examination it was April 29.

Mr. TOTTEN. I do not remember that I said anything about it. I do not see that it makes any difference.

Mr. MERRICK. It makes a very material difference.

Mr. BLISS. On this route from Vermillion to Sioux Falls, I will not

read the warrants, but I will put in the tabular statement showing the payments.

On route 35015 I now offer tabular statement showing gross payments, \$8,573.80, less \$1,638.91 of fines and deductions, leaving net payments, \$6,934.89. The table is as follows :

Statements and recapitulation of payments made to Dorsey, Miner & Peck, their subcontractors and assignees on nineteen routes below described.

Routes.	Termini.		State.	Pay accrued.	Fines and deductions, &c.	Remissions, &c.	Total payments.
	From—	To—					
35015	Vermillion.	Sioux Falls.	Dakota Ter.	\$8, 573 80	\$1, 638 91	.....	\$6, 934 89

Route No.	Terminal.		Auditor's report.		Period for which paid.	Pay per quarter.	Loss fines and disbursements.	Amount of payment.	Warrant or draft.		To whom paid.	
	From—	To—	No.	Date.					No.	Date.		
25015	Vermillion.	Sioux Falls, Dakota	29035	Nov. 8, 1878	3 qr., 1878	\$102 28	.....	\$102 22	W. 11761	Nov. 9, 1878	H. M. Valle	Assignee.
			3694	Jan. 29, 1879	4 qr., 1878	102 22	.....	102 28	W. 14377	Jan. 30, 1879	H. M. Valle	Assignee.
			11103	Apr. 22, 1879	1 qr., 1879	204 44	.....	204 44	W. 2969	Apr. 23, 1879	H. M. Valle	Assignee.
			16691	July 16, 1879	2 qr., 1879	204 44	.....	204 44	W. 5943	July 17, 1879	H. M. Valle, W. N. Roach, cash.	Assignee.
			27636	Oct. 21, 1879	3 qr., 1879	1,065 56	.....	1,065 56	W. 9946	Oct. 22, 1879	H. M. Valle, W. N. Roach, cash., J. A. J. Creswell, presd.	Assignee.
			2915	Jan. 26, 1880	4 qr., 1879	1,333 37	\$62 30	1,451 07	W. 105	Jan. 27, 1880	H. M. Valle, Thos. C. Pearsall, cash.	Assignee.
			10242	Apr. 17, 1880	1 qr., 1880	1,533 37	733 37	746 00	W. 3346	Apr. 19, 1880	H. M. Valle, J. A. J. Creswell.	Assignee.
			23911	July 26, 1880	2 qr., 1880	913 26	353 60	560 51	W. 7590	July 30, 1880	H. M. Valle, Thos. C. Pearsall, cash.	Assignee.
			24326	Oct. 15, 1880	3 qr., 1880	603 12	.....	603 12	W. 10871	Oct. 16, 1880	H. M. Valle, Thos. C. Pearsall, cash.	Assignee.
			4168	Jan. 25, 1881	4 qr., 1880	603 12	53 94	549 22	W. 12654	Jan. 27, 1881	H. M. Valle	Subcontractor.
			16476	May 18, 1881	1 qr., 1881	603 12	131 41	471 71	W. 7441	May 24, 1881	H. M. Valle	Subcontractor.
			25346	Aug. 4, 1881	2 qr., 1881	603 12	219 06	384 06	W. 531	Aug. 5, 1881	H. M. Valle	Subcontractor.
			39267	Oct. 28, 1881	3 qr., 1881	241 94	6 18	235 06	W. 5628	Oct. 29, 1881	H. M. Valle	Subcontractor.
			6469	Jan. 30, 1882	4 qr., 1881	241 24	.....	241 24	W. 1520	Jan. 31, 1882	H. M. Valle	Subcontractor.
						8,573 86	1,636 91	6,934 95				



Route No.	From--	To	State.	No	Date.	Period for paid.	Pay per quan	Losses due to a	Amount of ment.	No.	Date.	To whom paid.
Bell's	White River	Rawlins	Colorado	27155	Oct. 30, 1878	3 qr., 1878	425 00	R 54 16	396 52	W. 11365	Nov. 4, 1878	J. A. Wright ...
					27154	Oct. 30, 1878	3 qr., 1878	.....					R 36 89
				3697	Jan. 29, 1879	4 qr., 1878	425 00	.....	425 00	W. 14771	Jan. 30, 1879	H. M. Valle
				13642	April 20, 1879	1 qr., 1879	425 00	.....	425 00	W. 3701	May 2, 1879	C. F. Perkins
				23449	July 31, 1879	2 qr., 1879	2, 074 21	.....	1, 092 07	W. 6909	Aug. 1, 1879	S. W. Dorsey Mid leton & Co
				23450	July 31, 1879	2 qr., 1879	.....	777 82	204 32	W. 7840	Aug. 12, 1879	C. F. Perkins
				24731	Dec. 16, 1879	2 qr., 1879	3, 426 56	.....	2, 087 64	W. 12391	Dec. 17, 1879	Middleton & Co
				24732	Dec. 16, 1879	4 qr., 1879	.....	21 89	629 47	W. 12397	Dec. 17, 1879	C. F. Perkins
				24394	Aug. 4, 1880	4 qr., 1879	3, 426 56	R 1, 850 80	5, 180 75	W. 8311	Aug. 6, 1880	S. W. Dorsey J. W Bowler.
				30203	Oct. 25, 1880	1 qr. 1880	3, 426 56	.....	558 92	D. 4530	Mar. 27, 1880	C. F. Perkins
						2 qr., 1880	3, 426 56	1, 098 35	.....	D. 4572	Mar. 31, 1880	C. F. Perkins
				6367	Feb. 3, 1881	3 qr., 1880	3, 426 56	.....	3, 426 56	W. 11396	Oct. 26, 1880	J. W. Bowler
				6366	Feb. 3, 1881	4 qr., 1880	3, 426 56	.....	1, 306 99	W. 2817	Feb. 4, 1881	J. W. Bowler
				12560	April 22, 1881	4 qr., 1880	.....	21 89	2, 097 68	D. 3211	Feb. 3, 1881	Eugene Taylor
				12561	April 22, 1881	1 qr. 1881	3, 426 56	.....	926 56	D. 9278	April 23, 1881	Eugene Taylor
				23024	July 26, 1881	1 qr. 1881	.....	58 97	2, 441 03	D. 9270	April 23, 1881	Eugene Taylor
				23023	July 26, 1881	2 qr., 1881	7, 985 31	.....	2, 161 96	W. 1395	Aug. 2, 1881	J. W. Bowler
				80 56	Feb. 4, 1882	2 qr., 1881	.....	.....	5, 833 33	D. 1034	Aug. 4, 1881	Eugene Taylor
						3 qr., 1881	7, 985 31	336 01	5, 833 33	W. 8996	Nov. 12, 1881	Eugene Taylor
						.....	.....	348 00	1, 363 73	W. 6903	Feb. 11, 1882	J. W. Bowler
						4 qr., 1881	1, 841 67	R 1, 410 20	60 66	W. 2305	Feb. 11, 1882	Eugene Taylor
						.....	.....	485 05	W. 2306	Feb. 11, 1882	A. H. Brown	
								48, 167 42	7, 587 52	Deduction a.		
								37, 804 00				
								7, 567 52				
								45, 171 58				
								14 16				
								45, 167 42				

*NOTE.—\$896.36 of the \$777.89 deducted remitted to the subcontractor and charged to contractor.
 (NOTE.—Deductions on route 23152 from April 1, 1879, to March 31, 1880, charged in this settlement.
 \$4.16 deducted from contractor in settlement of other routes.

On route 38152, from Ouray to Los Pinos, I offer tabular statement showing gross payments of \$768.50 ; less deductions, \$654.77 ; the deductions having been made on the 3d of October, 1881. The table is as follows :

Statement and recapitulation of payment made to Dorsey, Miner, and Peck, their subcontractors and assignees on nineteen routes below described.

Route.	Termini.		State.	Pay accrued.	Fines and deductions	Remissions, &c.	Total payments.
	From—	To—					
38152.....	Ouray	Los Pinos...	Colorado.	\$768 50	\$654 77	.....	\$113 73

Route No.	Terminal.		Auditor's report.		Period for wh. paid.	Pay per quarter.	Loss fines and deductions.	Amount of payment.	Warrant or draft.		To whom paid.	
	From—	To—	State.	No.					No.	Date.		
36132	Ouray	Los Pi- nos.	Colorado	27155	Oct. 30, 1878	3 qr., 1878	3 qr., 1878	\$87 00	W 11931	Nov. 12, 1878	H. M. Vaile.....	Assignee.
				30977	Jan. 29, 1879	4 qr., 1878	4 qr., 1878	87 00	W 14371	Jan. 30, 1879	H. M. Vaile	Assignee.
				12108	Apr. 25, 1879	1 qr., 1879	1 qr., 1879	87 00	W 3408	Apr. 30, 1879	H. M. Vaile.....	Assignee.
				21985	July 26, 1879	2 qr., 1879	2 qr., 1879	87 00	W 6491	July 30, 1879	Lewis Johnson & Co.	Assignee.
				31924	Nov. 7, 1879	3 qr., 1879	3 qr., 1879	87 00	W 16293	Nov. 10, 1879	J. W. Dorsey	Assignee.
				60958	Feb. 26, 1880	4 qr., 1879	4 qr., 1879	87 00	W 9071	Mar. 1, 1880	Middleton & Co.....	Assignee.
				24325	Aug. 4, 1880	1 qr., 1880	1 qr., 1880	87 00	W 8316	Aug. 6, 1880	J. W. Dorsey	Subcontractor.
				24393	Aug. 4, 1880	2 qr., 1880	2 qr., 1880	87 00	W 8312	Aug. 6, 1880	J. L. Sanderson.....	Subcontractor.
				31900	Nov. 8, 1880	3 qr., 1880	3 qr., 1880	72 50	W 12006	Nov. 9, 1880	J. L. Sanderson.....	Assignee.
								29 00	W 13007	Nov. 9, 1880	A. H. Brown.....	Assignee.
								Reported Oct. 3, 1881				
								150 27				
								Charged contractor in settlement of the 3d quarter 1881 on rt. 35813, Dakota.				
								348 00				
								Charged contractor in settlement of the 2d quarter 1881 on rt. 38115, Colorado.				
								129 83				
								Charged subcontractor in settlement of the 3d quarter 1881, on rt. 30132, New Mexico.				
								740 83				
								654 77				
								Deductions.				
								1,305 60				
								687 10				
								Charged on other routes.				
								768 50				

* Note—Special agent's fare, route discontinued Aug. 15, 1880

GEORGE J. BREWER recalled and examined.

By Mr. BLISS:

Question. You have been sworn before?—Answer. Yes, sir.

Q. Are the papers for the Territory of Dakota in your charge?—A. Yes, sir; they are when they are not away from my charge.

Q. They are regularly in your charge?—A. They are regularly in my charge; yes, sir.

Q. [Submitting a paper to witness.] Please look at jacket indorsed 1878, May 2, and state if you know in whose handwriting that indorsement is?—A. The indorsement is mine, and the signature is General Brady's.

Q. [Submitting another paper to witness.] Letter indorsed 1878, January 14?—A. It is my indorsement.

Q. [Submitting another paper to witness.] Jacket indorsed 1878, June 10?—A. That is my writing, and General Brady's signature.

Q. [Submitting another paper to witness.] Letter indorsed 1878, October 5?—A. It is a distance circular; it is my indorsement.

Q. [Submitting another paper to the witness.] Jacket indorsed 1878, October 5?—A. That is my indorsement, and the signature of Mr. French.

Q. [Submitting another paper to the witness.] Jacket indorsed 1879, March 31?—A. It is my writing, and General Brady's signature.

Q. [Submitting another paper to the witness.] Subcontract inclosed, indorsed in red ink 1879, March 31?—A. It is my indorsement.

Q. [Submitting another paper to the witness.] Letter indorsed 1879, December 15?—A. That is my indorsement also.

Q. [Submitting another paper to witness.] Letter indorsed 1881, February 25; on the last paper, whose handwriting is this? [Indicating.]—A. General Brady's in the lower part.

Q. "Brewer, write Judge B. that cannot be done;" that you say is General Brady's handwriting?—A. Yes, sir.

Q. [Submitting another paper to witness.] Jacket indorsed 1879, January 10th?—A. The order is written by me and the signature by Mr. French.

Q. [Submitting another paper to the witness.] Paper in the same jacket indorsed 1879, May 14th?—A. That is my indorsement.

Q. [Submitting another paper to the witness.] Memorandum in the same jacket?—A. That is my handwriting.

Q. [Submitting another paper to the witness.] The indorsement on this jacket in blue ink?—A. Is General Brady's.

Q. The red ink is yours?—A. The red ink is mine, and the black ink, all but the signature, is mine. The signature to the black ink is French's, and the "Do this—Brady," in blue pencil, is Brady's.

Q. [Submitting another paper to the witness.] Jacket indorsed 1881, June 6th?—A. That is mine, all but the signature.

Q. The signature is whose?—A. Mr. Elmer's.

Q. [Submitting a paper to witness.] On one of these jackets there appears a memorandum that you said was in your handwriting?—A. That is my handwriting.

Q. Did you, upon that date, call General Brady's attention to the matter as there stated?—A. At the date of the order I did.

Q. What did you say to Mr. Brady?—A. Nothing, except make a plain statement of it.

Q. You told him what?—A. I told him that the oath of Mr. Vaile was filed instead of the oath of the contractor.

That the oath for expedition was not the oath of the contractor was that of a subcontractor?—A. That is it.

CROSS-EXAMINATION.

By Mr. WILSON:

Are these papers that you have identified all the papers belonging to the files of this case?—A. I cannot tell you, sir.

Have any papers recently been returned to you in this case?—A. I think not.

r. WILSON. Colonel Bliss, will you let me have the remainder of the papers?

r. BLISS. I will give you the remainder of the papers when your case of the case comes.

[Resuming.] Are you aware of the fact that Vaile had a subcontract in this case which entitled him to all the pay that was in it?—A. I think that was the case.

r. BLISS. [To Mr. Wilson.] It is among the papers you have in your hand.

r. WILSON. The subcontract of Vaile?

r. BLISS. Yes, sir.

r. WILSON. I simply want to find it.

r. BLISS. You have the papers.

r. WILSON. Will you let me have the rest of the papers now?

r. BLISS. I say nothing on the subject, Mr. Wilson.

r. WILSON. Will you return the papers to the files?

r. BLISS. I certainly shall, after I get through with the papers. When I get through with the papers on a route I return them. I shall return them the moment I get out of court.

r. WILSON. Why can you not let me have them now?

r. MERRICK. Do not have this controversy.

r. WILSON. There is no controversy about it. Here are the papers brought out. I do not know why I cannot see them.

THE COURT. The court has heretofore laid down the rule that when the Government is introducing its testimony, and offers a part of the contents of a jacket, the whole of its contents are regarded as in evidence at the time. As to other papers which the Government do not put in evidence, they are left for the defendants if they think proper to produce them.

r. WILSON. The papers are right here, your honor.

r. BLISS. You make the assertion that the papers are right here. I have some here, and some are not here, and among this bundle of papers are papers that do not belong to the files, or anything of the kind. If I should give you what I have here, I should give you an incomplete lot of papers. I shall return them all to the files.

r. WILSON. Why can you not let me see them?

r. MERRICK. We are trying to proceed according to the rule your honor laid down, and brother Wilson understands it as well as Mr. Bliss. Why this colloquy should take place in reference to a distinctly ruled matter, I cannot understand.

THE COURT. We have had so long a recess I suppose the rule has been forgotten. Mr. Wilson, the court will not compel them to produce the papers.

r. WILSON. Very well; if the court will give us time, at the proper time we will get them, of course.

By Mr. WILSON :

Q. [Resuming.] These papers did not belong to Mr. Turner's division?—A. No, sir; they are in my section.

Q. When did they go out of your section?—A. Some time last year; I cannot give you the exact day.

Q. Have they ever been back there since?—A. No, sir.

Q. Are you able to say whether all these papers that were in the jackets at the time they went out of your possession are in them now?—A. I cannot, sir.

Q. When you were on the stand before, I believe you stated that on one paper an order had been written by Mr. Turner, did you?—A. Yes, sir.

Q. Do you know how that happened?—A. It was during my absence from the city.

Q. You happened to be away; and when you are away, how is it?—A. Some other clerk is detailed to attend to matters requiring immediate attention.

Q. There is nothing unusual in that?—A. Nothing unusual.

Q. I wish to ask you whether it is customary to embrace special officers on the routes that are in operation, and to allow the contractor pro rata increased pay for the additional distance?—A. It is, sir.

Mr. BLISS. What is that?

The COURT. Mr. Wilson, that is introducing a new subject altogether. We had that matter up some days ago.

Mr. BLISS. The point I make is that he is asking whether it is customary to do a thing which we claim is in violation of law.

The COURT. I know that. I am satisfied it is customary, but whether it is according to law or not is another thing.

Mr. WILSON. I want to show that that has been the interpretation of the law by the department for a great many years. I want to show it by Mr. Brewer who is now on the stand, if your honor will permit it.

The COURT. You can ask him.

By Mr. WILSON :

Q. I will ask you whether or not that has been the practice of the department for a great many years?—A. It has, sir.

REDIRECT EXAMINATION.

By Mr. BLISS :

Q. I omitted to ask you something. Into whose hands did these files pass that went out of your hands?—A. Into Mr. Woodward's, or some of his agents.

Q. Do you know when they were delivered?—A. It was some time last year. I cannot tell the exact date from memory.

Q. To save recalling you, did the Bismarck and Tongue River papers fall within your section?—A. They did, sir.

Q. [Submitting a paper to the witness.] I show you a paper indorsed June 27, 1878?—A. That is my indorsement, sir.

Q. [Submitting another paper.] I show you a paper indorsed 1878, April 26?—A. My indorsement.

Q. In whose handwriting is the blue ink on the back?—A. General Brady's.

Q. [Submitting another paper.] I show you a paper indorsed 1878, June 27?—A. My indorsement.

Q. [Submitting another paper.] I show you a paper indorsed Sep-

ember 6, 1878 ?—A. That is indorsed by Mr. Taylor Page, a clerk in the office.

Q. [Submitting another paper.] I show you a jacket indorsed 1879, January 29 ?—A. All but the signature is mine.

Q. Whose is the signature ?—A. General Brady's.

Q. [Submitting another paper.] I show you a paper in that jacket indorsed 1879, June 29 ?—A. My indorsement.

Q. [Submitting another paper.] I show you a jacket indorsed 1879, February 3 ?—A. All mine but the signature, and that is General Brady's.

Q. [Submitting another paper.] I show you in that jacket a paper indorsed 1879, February 3 ?—A. That is my indorsement.

Q. [Submitting another paper.] I show you a jacket indorsed 1879, February 12 ?—A. It is all mine, except the signature, and that is General Brady's.

Q. [Submitting another paper.] I show you a paper in that jacket, indorsed 1879, May 7 ?—A. My indorsement.

Q. [Submitting another paper.] I show you a jacket indorsed 1879, September 30 ?—A. All mine, except the signature.

Q. Whose is that ?—A. General Brady's.

Q. [Submitting another paper.] In that jacket is a paper indorsed in blue pencil, 1879, September 30 ?—A. My indorsement.

Q. [Submitting another paper.] Also a paper indorsed 1880, December 6 ?—A. My indorsement.

Q. [Submitting another paper.] I show you a jacket indorsed 1878, October 1 ?—A. All mine, except the signature, and that is General Brady's.

Q. [Submitting another paper.] I show you a paper indorsed 1881, April 18 ?—A. My indorsement, in red ink and blue pencil.

Q. [Submitting another paper.] I show you a jacket indorsed 1881, July 23 ?—A. All mine but the signature.

Q. Whose is the signature ?—A. Mr. Lyman's, the Acting Second Assistant Postmaster-General.

Q. These papers have been in your charge ?—A. They were until they were delivered to Mr. Woodward or his agent.

Q. You know when they were delivered to him ?—A. Some time last summer.

Q. You recognize these papers as some of the files of the department ?—A. Yes, sir.

Q. And is that true of the others that I showed you ?—A. Yes, sir.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. Are these all the papers that belong to the files in this case ?—A. I should think not, sir.

Q. Are these all the papers that were turned over to Mr. Woodward ?—A. I should think not.

Q. Have any of the papers in this case been returned to your division ?—A. I do not recollect that any have.

Q. Can you tell whether or not all the papers that were in these jackets at the time they were turned over to Mr. Woodward are in the jackets now ?—A. I cannot.

Q. Have you any means of ascertaining whether any of the papers have been taken away from the files or not ?

The WITNESS. Since they left my room ?

Mr. WILSON. Yes.

A. No, sir; I have not.

Q. Did you keep any schedule of the papers that were turned over to Mr. Woodward?—A. No, sir.

By Mr. BLISS:

Q.. Mr. Wilson called your attention to some paper as having been indorsed by Mr. Turner. Do you remember upon what route that was?—A. My recollection is 34149.

Q. Where is that?—A. From Kearney to Kent. It may not be on that route. I think that is the one. It was not an indorsement. It was the order on the jacket.

The witness then left the stand.

Mr. BLISS. I now offer the following letter:

PHENIX INSURANCE COMPANY, HARTFORD CONNECTICUT,
BRANCH OFFICE, CINCINNATI, OHIO,
Agency at Lincoln Centre, D. T., January 1st, 1878.

HON. J. P. KIDDER,
Washington, D. C.:

DEAR SIR: I will call your attention to the fact that the Post-Office Department in advertising for bids for mail service has advertised the distance from Vermillion to Sioux Falls 50 miles by mail route number 35015. Now, the distance is at least 75 miles. Of course bidders will bid accordingly and we fear that the department may reject all bids on account of their being too high. Can you arrange the matter with the P. O. Department or shall we go into the petition business again? The people are very anxious for service on that route and will not be contented until the route is in successful operation. We dislike to trouble you so much, but as the people think that Congressmen can cure all their ills, then so long we will have to trouble you about that mail route. Accept our thanks for the services already rendered by yourself for our interests.

Yours respectfully,

A. BOYNTON.

Indorsed:

Respectfully referred to the Hon. Second Assistant Postmaster-General, January 12, 1878.

J. P. KIDDER.

Indorsed as received at the department 14th of January, 1878.
[The paper last read was marked by the clerk 2 N.]

The next is a jacket:

Date, 1878, May 2. State, Dakota.
No. of route, 38015. [New.] Termini of route, Vermillion and Sioux Falls.
Length of route, 50 miles. No. of trips per week, one.
Contractor, J. W. Dorsey. Pay, \$398.
On July 1st, 1878, embrace Brighton next after Alsen.

BRADY.

[The paper last read was marked by the clerk 3 N.]

The next is a jacket describing the route and then:

Change address to lock-box 714, Washington, D. C.

BRADY.

[The paper last read was marked by the clerk 4 N.]

The next is a distance circular as follows:

DISTANCE CIRCULAR.

U. S. POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, September 16, 1878.

SIR: To preserve accuracy in the route books of the department, the Postmaster-General requests the insertion in the columns below of the official names of the post-ces on Dakota route number 35015, between Vermillion and Sioux Falls, to be itten in the order in which they are situated, with the distance from one office to other.

Each postmaster will give the distance of his office from the post-office immediately ceding, certifying the same by his signature. Fulfill this duty promptly, and re- n the paper without delay to this office.

Respectfully, &c.,

THOMAS J. BRADY,
Second Assist. Postmaster-General.

. M. Vermillion will please have this attended to and returned.

From—	To—	Miles.	Postmasters' signa- tures.
million	Greenfield.....	12	C. G. Shaw.
enfield.....	Alsen.....	6	J. J. O'Connor.
en	Sunnyside	5	Margaret Ander.
nyside.....	Glenwood.....	5½	D. Stephen.
nwood.....	Brooklyn.....	5	John Sundstream.
oklyn.....	Kidder.....	6½	John Adamson.
der	Maple Grove.....	10	J. M. Nobles.
ple Grove	Sioux Falls	23	R. T. Fleetwood.
	Also report—		
en	Brighton	4½	Margaret Ander.
ghton.....	Sunnyside.....	2½	J. Mangan.
	Also report—		
ple Grove.....	Prairie Grove.....	13	J. C. Carpenter.
irie Grove.....	Sioux Falls	10	R. L. Walter.

[The paper last read was marked by the clerk 5 N.]

Mr. HENKLE. What is the aggregate ?

Mr. BLISS. It is not footed up.

The next is a jacket, as follows :

Date, 1878, October 5. State, Dakota.

No. of route, 35015. Termini of route, Vermillion and Sioux Falls.

Length of route, 73 miles. No. of trips per week, one.

Contractor, J. W. Dorsey. Pay, \$398. See D. C.

Allow contractor \$10.90 per annum pro rata, from July 1st, 1878, for two miles in- ase for Brighton.

FRENCH.

[The paper last read was marked by the clerk 6 N.]

the Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General, Washington, D. C. :

SIR: We, the undersigned postmasters on U. S. mail route, No. 35015, from Vermill- to Sioux Falls, Dakota Territory, do respectfully represent :

That the mail on the above route is now carried between Vermillion and Sioux Falls, tance 70 miles, on 10 hours' time between the two places.

In our opinion there is no reason why the time ought not to be extended. We there- e ask and petition that the time for carrying the mail on the above route, between rmillion and Sioux Falls, be extended to 16 hours.

Signed by the postmasters at Vermillion, Greenfield, Alsen, Brighton, nnyside, Glenwood, Brooklyn, Kidder, Prairie Grove, Sioux Falls, d Maple Grove.

[The paper last read was marked by the clerk 7 N.]

VERMILLION, CLAY COUNTY, DAKOTA,

February 19, 1881.

COND ASSISTANT POSTMASTER-GENERAL,

Washington, D. C. :

DEAR SIR: The contractor on route number 35015, from Vermillion to Worthing- kota, has failed to keep up service. I am compelled to employ temporary service on l route, and as the roads are very bad I write for instructions as to the amount to

pay. How much will you allow for trip of three days, four days, or two days? It can-
not be run on schedule time.
Please advise me at your earliest convenience. I cannot employ any one for less than
double contract price, and may be not for that.
Yours, very respectfully,

C. G. SHAW,
Postmaster.

[The paper last read was marked by the clerk 8 N.]
The next is a jacket :

Date, 1879, July 10. State, Dakota.
No. of route, 35015.
Termini of route, Vermillion and Sioux Falls.
Length of route, 75 miles.
No. of trips per week, two.
Contractor, J. W. Dorsey.

Hon. G. G. Bennett recommends granting petition for 10 hours schedule six times a
week. Present stock and carrier, three men and three horses. Required, five men and
ten horses. Increase of cost will be for trips, \$1,635.60; for expedition, \$3,680.08.

Vermillion R. R.....	322
Greenfield.....	18
Alsen.....	4
Brighton.....	8
Sunnyside.....	23
Glenwood.....	12
Brooklyn.....	64
Kidder.....	4
Maple Grove.....	144
Prairie Grove.....	20
Sioux Falls.....	3,000

From August 1st, 1879, increase service to six trips per week, and allow contractor
and subcontractor, \$1,635.60 per annum additional, being pro rata. Expedite schedule
to ten hours each way, and allow contractor and subcontractor, \$3,608.10 per annum
additional, being pro rata, as appears by sworn statement.

FRENCH.

Across this jacket is written in blue pencil: "Do this—Brady."
[The jacket last read was marked by the clerk 9 N.]
In that jacket is the following petition :

Hon. D. M. KEY,
Postmaster-General :

We, the subscribers, residents on the line of mail route 35015, Dakota Territory, re-
spectfully petition for daily service on that route, and also that the schedule be re-
duced to ten hours. Southern Dakota is receiving very large numbers of emigrants,
and this route is one of the principal lines running northward from a railroad point,
and is being very rapidly settled, and is, we believe, entitled to the additional mail
facilities asked for.

Signed by a page and a half of petitioners.
[The paper last read was marked by the clerk 10 N.]

Hon. D. M. KEY,
Postmaster-General :

We, the subscribers, residents on the line of mail route 35015, Dakota Territory, re-
spectfully petition for daily service on that route, and also that the schedule be re-
duced to ten hours. Southern Dakota is receiving very large numbers of emigrants,
and this route is one of the principal lines running northward from a railroad point,
and is being very rapidly settled, and is, we believe, entitled to the additional mail
facilities asked for.

Signed by half a page of petitioners in double columns.
Indorsed on the back :

Respectfully recommended.

G. G. BENNETT.

[The paper last read was marked by the clerk 11 N.]

There is also a petition inclosed in the same language and signed by about twenty petitioners.

[The petition last referred to was marked by the clerk 12 N.]

Also in the same jacket the following:

I notified Gen. Brady that Vaile's oath instead of contractor's was filed.

BREWER.

[The paper last read was marked by the clerk 13 N.]

The next is the oath dated Washington, D. C., May 14, 1879. I think that was not proved. I had it laying on the table before me. [Submitting paper to Mr. Wilson.]

Mr. WILSON. [Returning the paper.] It has the file-mark of the department on it, and I have no objection to it.

Mr. BLISS. [Reading:]

WASHINGTON, D. C. May 14, 1879.

JOHN THOMAS J. BRADY,

Second Assistant Postmaster-General:

SIR: The number of men and animals required to carry the mail on route 35015, from Vermillion to Sioux Falls, is three men and 12 animals three times a week on the present schedule. With an expedited schedule of ten hours it will require five men and ten animals.

Respectfully,

H. M. VAILE.

DISTRICT OF COLUMBIA, ss:

The above-named H. M. Vaile appeared before me and made oath to above statement. Witness my hand and official seal this 14th May, 1879.

[SEAL.]

W. F. KELLOGG,
Notary Public.

[The paper last read was marked by the clerk 14 N.]

Mr. WILSON. I want to call the attention of the jury to the fact that the Boynton who signed the letter that Colonel Bliss read, also signed this petition for a ten-hour schedule. [Submitting petition to jury.]

Mr. BLISS. The letter that he wrote was stating that the route should be advertised as seventy-five miles, when it was only advertised as fifty miles.

The next is a jacket as follows:

Date 1879, March 31. No. of route, 35015.

Termini of route, Vermillion to Sioux Falls.

Length of route, 75 miles. No. of trips per week, two.

Contractor, J. W. Dorsey. Pay, \$817.80.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of H. M. Vaile, whose post-office address is Independence, Jefferson County, Missouri, for service on this route at \$817.80 per annum, from January 1st, 1879, to June 30, 1882, has been filed in this office.

BRADY.

[The paper last read was marked by the clerk 15 N.]

Inclosed is the subcontract between John W. Dorsey and H. M. Vaile, reciting that H. M. Vaile is to carry the mail from the 1st of July, 1878, to the 30th of June, 1882, and to receive 100 per cent. of any amount for expedition. Signed by John W. Dorsey, by John R. Miner, attorney in fact, and H. M. Vaile.

[The paper last read was marked by the clerk 16 N.]

I now offer the contract on this route. It provides for carrying the mail from Vermillion, by Greenfield, Alsen, Brighton, Sunnyside, Glenwood, Brooklyn, Kidder, Maple Grove, and Prairie Grove, to Sioux Falls and back once a week, for \$398 per annum. It was signed by

John W. Dorsey on the 28th of March, 1878, and the oath was taken before A. E. Boone. The schedule is as follows:

Leave Vermillion Friday at 6 a. m.
Arrive at Sioux Falls by 8 p. m.
Leave Sioux Falls Saturday at 6 a. m.
Arrive at Vermillion by 8 p. m.

[The contract last offered was marked by the clerk 17 N.]

On Exhibit 7 N, which is the petition of the postmasters asking that the time be extended, there is indorsed the following:

Respectfully recommended.

GRANVILLE G. BENNETT.

Then, in what Mr. Brewer says is General Brady's handwriting:

BREWER: Write Judge B. that cannot be done.

BRADY.

There is no date to it. It is indorsed as received by the department December 15, 1879.

I now offer the contract on route 38152, from Ouray to Los Pinos, which I ought to have put in before. It is dated like the others, March 16, 1878. The amount is \$348 a year. It was signed by Mr. Dorsey on the 28th of March, 1878. The schedule is as follows:

Leave Ouray Friday at 6 a. m.
Arrive at Los Pinos by 6 p. m.
Leave Los Pinos Saturday at 6 a. m.
Arrive at Ouray by 6 p. m.

The oath was taken by Mr. Dorsey on the 28th of March.

[The paper last read was marked by the clerk 15 N.]

Contract on route 38113, from White River to Rawlins, dated March 15, in the same way, and signed by Mr. Dorsey on the 28th of March. Schedule of time:

Leave White River Monday at 6 a. m.
Arrive at Rawlins Friday by 6 p. m.
Leave Rawlins Monday at 6 a. m.
Arrive at White River Friday by 6 p. m.

The oath was taken by Mr. Dorsey on the 28th of March.

[The contract last offered was marked by the clerk 55 L.]

Both of the last two contracts on routes 38113 and 38152, are witnessed by John R. Miner. I think that completes those routes.

Mr. HENKLE. Will you have Mr. Brewer on the stand before you close this route?

Mr. BLISS. No, I think not.

Mr. HENKLE. We would like Mr. Brewer brought in to ask him a question.

The COURT. If he is here you can ask him.

Mr. HENKLE. We would like to have him come in after recess.

Mr. BLISS. You will have to get him in.

Mr. MERRICK. You will have to get him. We have as much as we can do.

Mr. BLISS. He will come if he is sent for, beyond question.

At this point (12 o'clock and 25 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. WILSON. I understand Mr. Brewer declines to come back unless sent for by the court or by the prosecution. I suppose we will have to take a subpoena out for him.

The COURT. I suppose that is the way to bring him here.

Mr. WILSON. I will ask the clerk to issue a subpoena for George J. Brewer to appear forthwith.

Mr. BLISS. I now propose to take up route 35051, from Bismarck to Tongue River or Miles City.

Maps of this route were distributed to counsel and to the jury.]

Mr. BLISS. I first offer the contract dated March 15, 1878, with John Miner to carry the mails from Bismarck, Dakota, by Yellowstone, to Tongue River, two hundred and fifty miles and back once a week, entered by Miner on the 23d of March, in the presence of A. E. Boone and J. J. Turner, witnesses, and sworn to by Miner on the 23d of March, 1878, before Boone, notary public.

Schedule as follows:

Leave Bismarck Monday at 6 a. m.

Arrive at Tongue River Thursday by 6 p. m.

Leave Tongue River Monday at 6 a. m.

Arrive at Bismarck Thursday by 6 p. m.

The contract last offered was marked by the clerk 1 O.]

UNITED STATES SENATE CHAMBER,
Washington, April 20th, 1878.

DEAR SIR: Will you have the kindness to write a letter addressed to the Second Assistant Postmaster-Gen'l, giving the distance from Bismarck to the mouth of Tongue River, by the wagon-roads, or according to your survey.

Truly yours,

S. W. DORSEY.

Gen'l ROSSER.

The paper last read was marked by the clerk 2 O.]

NORTHERN PACIFIC R. R. CO., ENGINEER DEPARTMENT,
Washington, D. C., April 21st, 1878.

T. J. BRADY,

2nd Asst. Postmaster, Washington, D. C.:

RE: In compliance with the enclosed request of Senator Dorsey, I respectfully submit the following statement for your information: Distance from Bismarck to the mouth of Tongue River, via wagon-road, is three hundred and three (303) miles, and distance by railroad line, along which wagons cannot go without the expensive construction of a road, is two hundred and eighty-nine (289) miles.

Respect'y,

THOS. S. ROSSER,
Eng'r N. P. R. R.

The paper last read was marked by the clerk 3 O.]

WASHINGTON, D. C., June 25th, 1878.

1. THOS. J. BRADY,

2nd Asst P. M. Gen'l:

RE: I beg to inclose herewith my affidavit respecting the impracticability of carrying the mails between Bismarck and Tongue River. Bands of Indians from Red Cloud and Spotted Tail agencies are constantly crossing this route going to and coming from among Bull's bands.

No one thinks of venturing out on this line without a large escort, and no white man has ever passed over the proposed line up to date. The route is absolutely unnecessary, and I trust you will discontinue it immediately.

Yours respect'y,

A. E. BOONE.

The paper last read was marked by the clerk 4 O.]

DISTRICT OF COLUMBIA,
County of Washington, ss :

Personally appeared before me, a notary public for the District of Columbia, Albert E. Boone, who is personally known to me, and upon being sworn according to law, he deposes and says that he is the authorized agent of John R. Miner, contractor on route 35051, Bismarck to Tongue River, and that his agent, sent forward to Bismarck to put service on said route July 1st, proximo, could find no carriers that would venture over said route unless protected by a large military escort to protect them and the mails from hostile Indians that infest the entire route from Bismarck to Tongue River, and that it is utterly impossible to perform said service without a large escort accompanying each mail; and the deponent further says that the maintenance of this route is wholly unnecessary, as there are no offices between Bismarck and Tongue River, a distance of about 350 miles, and both of said terminal points now have ample mail facilities.

A. E. BOONE.

Sworn and subscribed to before me this 25th day of June, 1878.

W. F. KELLOGG, [SEAL.]
Notary Public.

[The paper last read was marked by the clerk, 5 O.]

Hon. THOMAS J. BRADY,
2d Ass't P. M. Gen'l, Washington, D C. :

SIR: The route from Bismarck, Dakota, to Tongue River, No. 35051, according to your advertisement, was let to me at \$2,350, for once a week service.

The distance, as stated by the department, was 250 miles. I bid upon the route, supposing that to be the *real* distance or at least something approximating to it, but, after the award and contracts made by me, I found upon inquiry that the distance by an air line was over three hundred miles, and by the most feasible wagon-road which we would have to make over three hundred and fifty miles. In the nature of things, neither the department nor myself could have known the actual distance, for the reason that the country through which it is proposed to run this line, is not only unsurveyed, but is substantially unexplored.

The distance was only known to the engineers of the Northern Pacific Railway, who have filed certificate in your office that the air-line distance is over 300 miles. No case like this, I am sure, ever came to the attention of the department before.

Having taken the route very low at the distance named in the advertisement, I have to request that you discontinue the route for the following reasons:

- 1st. There is no office between Bismarck and Tongue River now, and there are no settlements whatever to be supplied with the U. S. mail.
- 2nd. Tongue River is supplied twice a week by the route from Fort Buford.
- 3rd. The distance is 350 miles instead of 250 miles as your advertisement said.
- 4th. The country being unsurveyed and unexplored, no one could tell whether the distance you gave was the true one or not.
- 5th. The whole country between Bismarck and Tongue River is occupied by hostile Indians, and no mail can be carried over this line *except with a large military escort*. It is simply impossible to carry the mails over this route until military posts are established along this route.

I therefore respectfully ask that this route may be discontinued.

Respectfully, &c.,

JOHN R. MINER, Contractor.
"B."

[The paper last read was marked by the clerk 6 O.]

WASHINGTON, D. C., 30th Sept., 1878.

Hon. THOS. J. BRADY,
Second Ass't P. M. Gen'l :

SIR: The number of men and animals necessary to carry the mails on route 35051, Bismarck to Tongue River, three times a week, is twelve men and thirteen animals. The number of men and animals necessary to carry said mails on a reduced schedule of sixty-five hours, is one hundred and fifty men and one hundred and fifty animals.

Respectfully,

JOHN R. MINER.

DISTRICT OF COLUMBIA,
County of Washington, ss :

I, John R. Miner, being duly sworn, depose and say that the above statement is true, as I verily believe.

JNO. R. MINER.

Sworn to and subscribed before me this 4th day of October, 1878.

[SEAL.]

W. F. KELLOGG,
Notary Public.

[The paper last read was marked by the clerk 7 O.]

WASHINGTON, D. C., 4th Oct., 1878.

Hon. THOS. J. BRADY,
Second Ass't P. M. Gen'l:

SIR: I will perform the service on route No. 35051, Bismarck to Tongue River, two additional trips per week, and on a schedule of sixty-five hours, for an additional compensation of thirty-two thousand six hundred and fifty dollars per annum.

Respectfully,

JNO. R. MINER.

[The paper last read was marked by the clerk 8 O.]

On the paper marked 6 O, there is an indorsement which I failed to read:

Judge Kidder presents this with the statement that he has reason to believe that the facts set forth therein are correct, though he does not know of his personal knowledge.

BRADY.

JUNE 25.

U. S. POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, 20 July, 1878.

SIR: By direction of the Postmaster-General, you are desired to give answer to the under written inquiry by writing it opposite thereto, or on the next page, and returning this sheet, containing such answer, signed and dated without delay.

Respectfully, &c., &c.,

THOS. J. BRADY,
Second Assistant Postmaster-General.

Inquiry of the Second Assistant P. M. G.:

Has the new contractor on route 35053, Fort Buford to Tongue River begun the service?

Answer of W. D. O'Toole, P. M., dated August 14, 1878: It was open up promptly.

W. D. O'TOOLE, P. M.,
Per (name undecipherable.)

Also, route 35051, commenced service on July 7th.

W. D. O'TOOLE.

[The paper last read was marked by the clerk 9 O.]

The next is a jacket, as follows:

Date, 1878, Feb. 12; State, Dak.

No. of route, 35051.

Termini of route, Bismarck, Fort Keogh.

Length of route, 310.

No. of trips per week, 3.

Contractor, J. R. Miner.

Pay, \$35,000.

Postmaster and contractor ask change schedule.

Leave Bismarck Tuesday, Thursday, Saturday 11 p. m.

Arrive Fort Keogh in 65 hours.

Leave Fort Keogh Monday, Wednesday, Friday 7 a. m.

Arrive Bismarck 65 hours.

BRADY.

[The jacket last read was marked by the clerk 10 O.]

On the inside is a schedule, as follows:

SCHEDULE.

The undersigned postmasters and contractors recommend the following departures and arrivals on mail route No. 35051, Dakota:

Leave Bismarck Tuesday, Thursday, and Saturday at 11 p. m.

Arrive at Fort Keogh in 65 hours.

Leave Fort Keogh Monday, Wednesday, and Friday at 7 a. m.
Arrive at Bismarck in 65 hours.

This schedule is signed by John R. Miner, contractor, only. No postmaster has signed. It is marked across in blue pencil, "Gen'l Brady says order this."

[The paper last read was marked by the clerk 11 O.]

[Western Union Telegraph Company, dated Bismarck, D. T., 5 Jan. 1880, to Thos. J. Brady, Wash'n :]

Regarding Keogh service whole shall be regarded failure—impossible for any person perform in winter on present schedule. Could probably secure six days' service.

C. A. LOUNSBERRY, P. M.

[The paper last read was marked by the clerk 12 O.]

Jacket as follows:

Date, 1878, October 1. State, Dakota.

No. of route, 35051. Termini of route, Bismarck and Tongue River.

Length of route, 250. No. of trips per week, one.

Contractor, J. R. Miner. Pay, \$2,350.

Notify the Auditor of the Treasury for the Post-Office Department that the subcontract of H. M. Vaile, whose post-office address is Independence, Missouri, for service on this route at \$2,250 per annum, from July 1st, 1878, to June 30, 1882, has been filed in this office.

BRADY.

[The jacket last read was marked by the clerk 13 O.]

The subcontract inclosed is dated July 1st, 1878, between John R. Miner and H. M. Vaile. The party of the second part agrees to carry the mail from the 1st of July, 1878, to the 30th of June, 1882, for \$2,350 per annum. There is a provision that if the service is expedited the party of the second part shall receive 100 per cent. of the expedition. Also a provision that the party of the second part shall carry the employes of John R. Miner, and that certificates of service shall be forwarded to Miner. The contract is signed by John R. Miner and by H. M. Vaile.

[The contract last offered was marked by the clerk 14 O.]

Date, 1879, January 29. No. of route, 35051.

Termini of route, Bismarck and Tongue River. [Fort Keogh.]

Length of route, 310 miles. No. of trips per week, three.

Contractor, John R. Miner. Pay, \$35,000.

Contractor and subcontractor ask withdrawal of subcontract from January 1st, 1879.

Withdraw subcontract January 1st, 1879, contractor and subcontractor having asked that it be done.

Special.

BRADY.

T. J. B.

[The jacket last read was marked by the clerk 15 O.]

WASHINGTON, D. C., January 29, 1879.

Hon. THOMAS J. BRADY,
Second Assistant P. M. G. :

SIR: We hereby request permission to withdraw subcontract on route 35051, Bismarck to Tongue River, from January 1st, 1879.

Respectfully,

JOHN R. MINER,
Contractor.

Subcontractor.
H. M. VAILE,
Subcontractor.

[The paper last read was marked by the clerk 16 O.]

Mr. HINE. H. M. Vaile was the second subcontractor. Have you got the name of the other?

Mr. BLISS. No, sir.

Mr. WILSON. Does not the subcontract show who was the other?

Mr. BLISS. The only one I know of is H. M. Vaile.

Mr. HINE. You read them so fast you confused them.

Mr. BLISS. I read them in the precise order of date. Mr. Vaile's subcontract was placed on file October 1, 1878. That is the date of the jacket, and the contract is dated the 1st of July, 1878. On the 29th of January, 1879, there is a jacket and an order to withdraw the subcontract, and inclosed in that jacket is this request to withdraw the subcontract, dated the 29th of January, 1879.

Mr. HINE. It is signed by the first contractor only.

Mr. BLISS. There is no evidence of any first contractor.

Mr. MERRICK. It is signed by Miner as contractor, and by Vaile as subcontractor.

Mr. HINE. And by another subcontractor.

Mr. MERRICK. No, not at all.

Mr. HINE. No matter. Pass on.

Mr. BLISS. Here is the subcontract of Mr. Vaile, which is dated the 1st of July, 1878, for service from that day. It is jacketed and filed on the 1st of October, 1878, and notice given that it is to be regarded from that date. Then comes the order of January 29, 1879, withdrawing it in accordance with the request in the jacket. Then comes this jacket:

Date, 1879, February 3rd. State, Dakota.
 No. of route, 35051.
 Termini of route, Bismarck and Fort Keogh.
 Length of route, 310 miles.
 No. of trips per week, three.
 Contractor, J. R. Miner.
 Pay, \$35,000.
 Contractor and subcontractor request that order of January 29 be rescinded.
 Rescind order number 888, January 29, 1879, at request of contractor and subcontractor.

BRADY.

Special. T. J. B.

[The paper last read was marked by the clerk 17 O.]

Inclosed in that jacket is the following:

WASHINGTON, D. C., February 3rd, 1879.

Hon. T. J. BRADY,

Second Assistant Postmaster-General:

SIR: We hereby request that the subcontract between us on route 35051, from Bismarck to Tongue River, which we requested withdrawn from the files of your office be again placed on file from January 1st, 1878, or the order withdrawing the same be revoked.

Respectfully,

JOHN R. MINER,
Contractor.
 H. M. VAILE,
Subcontractor.

[The paper last read was marked by the clerk 18 O.]

The COURT. So they got it back again.

Mr. BLISS. Yes, sir.

Mr. MERRICK. They just got back where they started.

The COURT. I have not heard the order increasing the pay to \$35,000 yet.

Mr. MERRICK. It has not been put in yet.

The COURT. There was some reference made to it.

Mr. BLISS. I read Mr. Miner's proposal to carry it at that rate. Now, I am coming to the order.

Date, October 4. State, Dakota.

No. of route, 35051. Termini of route, Bismarck and Tongue River.

Length of route, 250 miles. No. of trips per week, one.

Contractor, J. R. Miner. Pay, \$2,350.

Hon. J. P. Kidder, ex-Mayor Charles, of Sioux City, postmaster Bismarck, president N. P. R. R., clerk district court, attorneys, Hon. M. Maginnis, citizens of Bismarck and Miles City, Gen. N. A. Miles, ask for three times a week service and expedited schedule. Present schedule, three and a half days; proposed, 65 hours. Contractor furnished sworn statement that 12 men and 13 animals are required for tri-weekly on present schedule; that for a 65-hour schedule 150 men and 150 horses will be required. This will cost pro rata per annum, \$828,250, and contractor agrees to increase and expedite from October 7 for \$32,600 per annum additional. War Department letter also inclosed, stating that Gen. Sherman desires this service.

Across the jacket is written :

State distance as 303 miles, as appears by certificate of Gen. T. A. Rosser, engineer N. P. R. R. From January 1st, 1879, increase service to three trips per week, and allow contractor and subcontractor \$4,700 per annum, being pro rata. Reduce schedule time to 65 hours in each direction, and allow contractor \$27,950 per annum additional pay, being less than pro rata, as appears by his sworn statement of stock and carriers required.

BRADY.

The jacket last read was marked by the clerk 19 O.

The COURT. Does that make it \$70,000?

Mr. WILSON. Oh, no; it was only increased to \$30,000. If they had made the calculation according to the number of men and animals required it would have amounted to about \$84,000; but the contractor agreed to carry it for \$35,500, which was the rate that was fixed.

The COURT. Additional?

Mr. MERRICK. Certainly; the whole amount is \$70,000.

Mr. WILSON. Oh, no.

Mr. BLISS. It took two hitches. There is another hitch that added trips and carried it up to seventy odd thousand dollars. This last brought it up to about \$35,000.

Mr. MERRICK. The expedition was \$35,000.

Mr. WILSON. Oh, no.

Mr. BLISS. The original amount was \$2,350. On the first of January, \$4,700 was added for increase of trips, and \$27,950 for expedition, carrying the total amount up to \$35,000. There was a subsequent increase in August of the same year, carrying it up to \$70,000.

Mr. WILSON. We will get at that in due time.

Mr. BLISS. Inclosed in the jacket I last read is a petition as follows:

MILES CITY, MONTANA TERRITORY.

Hon. D. M. KEY,

Postmaster-General :

SIR: The undersigned, citizens of Montana Territory, beg leave to state that the mail service on the route between Bismarck and Tongue River is entirely inadequate for the wants of the people now supplied by said route. The Territory is now settling up very rapidly both east and west of Tongue River and one trip a week can hardly suffice. We therefore, very respectfully, but urgently, request that this route be increased to three trips a week and the schedule to at least 65 hours.

Signed by fifteen or twenty petitioners.

[The paper last read was marked by the clerk 20 O.]

Inclosed in the jacket is a sketch map of the route. It is probably referred to in some of these papers.

[The map was marked by the clerk 21 O.]

Mr. WILSON. That map does not belong to the petition.

Mr. BLISS. It is in the jacket.

Mr. WILSON. I know. Things have got mixed.

Mr. BLISS. I found it in that jacket.

Mr. WILSON. It will straighten itself out, if you will read all the papers.

Mr. BLISS. I am going to do so.

Mr. WILSON. That is all we want.

Mr. BLISS. Inclosed in that jacket is another jacket describing the route, and then stating as follows:

Hon. J. P. Kidder, ex-Mayor Charles, of Sioux City, P. M. Bismarck, president N. P. R. R., clerk district court, attorneys. Hon. M. Maginnis, referring to personal interview of himself and General Miles last winter, citizens of Miles City, Gen N. A. Miles, citizens of Bismarck, ask for tri-weekly service and expedited schedule. Contractor furnishes sworn statement that for service three times a week on present schedule, 11 men and 12 animals are required; but 37 men and 73 animals will be required on a 65-hour schedule.

Increase 2 times a week	\$4,700
Expedition	\$26,884

Total	\$31,584
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The distance this route, as shown by Gen. Rosser's certificate, is 303 miles. Present schedule, three and a half days.

All in red ink, and identified by Mr. Brewer as being his writing.

[The jacket last read was marked by the clerk 22 O.]

FORT BUFORD, D. T., July 30, 1878.

Hon. J. B. KIDDER,
Fermillion, D. T. :

MY DEAR SIR: As a result of my present trip to the northwest, I learn that the mail service from Bismarck to Fort Keogh, on the Tongue River, is entirely inadequate to the present demands of the rapidly increasing population of the country west of Tongue River; and that at least three trips a week on faster time is absolutely necessary. I therefore beg you to address a letter to the P. O. Department asking that service on this route be increased from one to three trips a week, on a schedule of say 65 (sixty-five) hours.

This, I believe, will be of great service to the military posts, business men, and settlers on Tongue River and the Upper Yellowstone. Hoping that you will be able to accomplish this,

I am, very respectfully, your obed't servant,

JOHN H. CHARLES.

Address: JOHN H. CHARLES, Sioux City, Iowa.

Respectfully referred to the Hon. Second Asst. P. M. General, and I hereby certify that Mr. Charles, the writer of the above letter, is well known to me; that he is one of the leading business men of Sioux City, and formerly its mayor; and he is perfectly reliable, and from my own knowledge of the wants of the public in this regard, I have no hesitancy in recommending the additional service asked for, and most earnestly request that it be ordered.

Aug. 2, 1878.

J. P. KIDDER, Dakota.

[The paper last read was marked by the clerk 23 O.]

SAINT PAUL, MINN., July 15th, 1878.

Hon. T. J. BRADY,
Second Assistant Postmaster-General :

SIR: As a result of observations made during my present visit to the northwest, I beg leave to submit the following for your consideration:

Settlements are being rapidly and extensively made on the projected line of the Northern Pacific Railroad, and tributary territory between Bismarck, Dak. Territory, the present terminus, and Tongue River, in Montana; and west of Fort Keogh a large immigration has been and is pouring in and occupying the land. These citizens and settlers are inadequately supplied with mail facilities, as are also the military posts in that region, and that want is daily becoming more and more felt. For these reasons I venture to call your attention to the subject, and I respectfully recommend and request that the mail service on the route from Bismarck to Tongue River be increased to three (3) trips per week, each way, and that the schedule time be reduced from ninety (90) to sixty-five (65) hours.

This increase of service would be entirely reasonable, and is not only justified, but I believe, imperatively demanded by considerations of public welfare.

I have the honor to be, very respectfully, your obedient servant,

C. B. WRIGHT,
President Northern Pacific R. R. Co.

[The paper last read was marked by the clerk 24 O.]

SAINT PAUL, MINN., July 15, 1878.

Hon. D. M. KEY,

Postmaster-General:

SIR: As a result of observation made during my present visit to the Northwest, I beg to submit the following:

Settlements are being rapidly and extensively made on the projected line of the Northern Pacific Railroad, between Bismarck, Dak. Ty., the present terminus, and Tongue River, in Montana, and west of Fort Keogh a large immigration is pouring in and occupying the land. These citizens and settlers are inadequately supplied with mail facilities, as are also the United States military posts in that region, and that want is becoming daily more and more felt. For these reasons I venture to call your attention to the subject, and respectfully recommend and request that the mail service on the route from Bismarck to Tongue River be increased to three (3) trips each way per week, and that the schedule time be reduced from ninety (90) to sixty-five (65) hours.

This increase of service would be entirely reasonable, and is not only justified, but is, I believe, imperatively demanded by considerations of public welfare.

I have the honor to be, very respectfully, your obedient servant,

C. B. WRIGHT,
President Northern Pacific R. R. Co.

[The paper last read was marked by the clerk 25 O.]

The COURT. What are their respective dates?

Mr. WILSON. They are the same in substance.

Mr. BLISS. The dates are identical.

The COURT. Then, they are the same letter.

Mr. BLISS. They are dated on the same day.

Mr. WILSON. They are substantially the same. One is addressed to the Postmaster-General, and the other is addressed to General Brady.

Mr. BLISS. [Reading:]

BANK OF BISMARCK,
Bismarck, D. T., July 18, 1878.

Hon D. M. KEY,

P. M. General, Washington, D. C.:

SIR: I desire to call your attention to the mail route between this place and Tongue River, Montana.

The country west of us is settling up rapidly and the mail facilities are entirely inadequate to the wants of those living in that section of the country, including not only the settlers, but the military posts where the want of more mail facilities are being felt daily. And should the mail route between this place and Tongue River be increased to three trips a week each way, it would meet a want that has become almost a necessity, and one that the parties living on the line of route earnestly beg may be extended to them. This request, in my opinion, is a just one, and a request which, if granted, will be a public welfare.

Very respectfully,

J. W. RAYMOND,
President.

Indorsed :

I earnestly but respectfully recommend the increase of service asked for in this letter of Col. Raymond's. I know personally that the statement herein made is true. Col. R. is a banker, and one of the leading men in Bismarck. Whatever he says can be relied upon.

July 28, 1878.

J. P. KIDDER.

[The paper last read was marked by the clerk 26 O.]

BISMARCK, DAKOTA, July 23, 1878.

To the Hon. the SECOND ASSISTANT POSTMASTER-GENERAL :

SIR: I have the honor to call your attention to the personal call made on you last winter by Gen'l Miles and myself in relation to establishing a daily mail route between Miles City and Bismarck, which, at that time, you may remember, received your favorable consideration.

A weekly mail (route 35051) has been let, and the service is now established from this place, but with a once-a-week mail and such a long schedule, the route will not be of much use, and will not shorten the mail time much beyond the long route via Montana.

It is now proposed to increase the service to tri-weekly, and to reduce the schedule from ninety hours to sixty-five. To make the service valuable, this should be done at once, and then the question of daily service may be postponed until another year.

I find the country is settling faster, and the need of this mail is even greater than was set forth by Gen'l Miles at the time of our call, or in the recommendations of other army officers which have been made to you.

I hope the service may be increased, and the schedule reduced as asked for.

With great respect, your ob'd't serv't,

MARTIN MAGINNIS,
Del. from Montana.

[The paper last read was marked by the clerk 27 O.]

GEO. P. FLANNERY.]

[JOHN K. WETHERBY

LAW OFFICES OF FLANNERY & WETHERBY,
Bismarck, D. T., July 20th, 1878.

Hon. T. J. BRADY,

Second Assistant Postmaster-Gen'l :

DEAR SIR: In view of the rapid development of the country west of the Missouri River, and in the valleys of the Yellowstone and Tongue Rivers, and the large number of emigrants continually going into this country, and taking lands along the projected line of the N. P. R. R., who at present are but poorly supplied with mail facilities, I beg leave to suggest that the service on the route between Bismarck, D. T., and Fort Keogh be increased to three trips a week, and that the time be reduced from ninety to sixty-five hours, which will result in a great benefit to a large number of worthy pioneers who are doing so much to develop the western country.

Very respectfully,

GEO. P. FLANNERY.

[The paper last read was marked by the clerk 28 O.]

OFFICE OF EMER N. COREY,
CLERK OF DISTRICT COURT,
Bismarck, D. T., July 20th, 1878.

Hon. D. M. KEY,

Postmaster-General :

Having for some time noticed the rapid increase in the settlement of the country between this point and "Tongue River," Montana, and west of Fort Keogh, M. T., and having experienced the great necessity for better mail facilities between said points, I venture to call your attention to this subject, and respectfully ask that you may, at your earliest convenience, take into consideration the advisability of increasing the mail service between Bismarck, D. T., and Tongue River, M. T., to 3 trips each way per week, and that the schedule time be reduced from 90 to 65 hours.

I have the honor to be your ob'd't serv't,

EMER N. COREY
Clerk of Dist. Court.

[The paper last read was marked by the clerk 29 O.]

POST-OFFICE, *Bismarck, D. T.* July 19, 1878.

THOMAS J. BRADY,

Second Assistant P. M. General, Washington, D. C. :

I have the honor to call the attention of the department to the necessity for increased service on route 35051, from Bismarck to Tongue River.

The country is rapidly settling. One may start from Bismarck on foot and travel to the Custer battlefield, which have already been taken by settlers, and stop every night at the rauche of a settler. An important village has already sprung up at the mouth of the Tongue River, and much of the country not covered by military reservations has been taken for farming purposes.

Several of the most important military posts in the department can best be served by this route, and the service proposed will cost less than the War Department paid last year for carriers carrying special messages from Tongue River to telegraphic points.

The time necessary to reach Tongue River by the old route via Buford is about ten days. This can be reduced not only to the four days allowed in the Miner contract, but when the route is once established, it can and should be still further reduced to at least sixty-five hours.

I have had frequent talks with Gen. Miles in relation to this matter, and know that he thinks the increased service proposed is very important, and I believe it will be economical on the part of the Government to grant the increase asked.

In all probability, too, the N. P. will be extended next season—work in that direction may even be done this fall—and settlements will surely push ahead of their work. Carriers have already provided for a telegraph line, which should be supplemented by direct and frequent mail communication. A military post, at least a camp, will, no doubt, be established on the Little Missouri at the point where the R. R. will end and where this route now crosses it. On looking at the matter from every possible standpoint the increased service asked for should be granted.

I am, sir, very respectfully, your obed. servant.

C. A. LOUNSBERRY, P. M.

[The paper last read was marked by the clerk 30 O.]

MILES CITY, MONTANA TERRITORY.

Hon. D. M. KEY,

Postmaster-General :

SIR: The undersigned, citizens of Montana Territory, beg leave to state that the mail service on the route between Bismarck and Tongue River is entirely inadequate to the wants of the people now supplied by said route.

The Territory is now settling very rapidly both east and west of Tongue River, and one trip a week can hardly suffice.

We therefore very respectfully but urgently request that the route be increased to three trips a week, and the schedule to at least sixty-five hours.

Signed by a page and a half of petitioners.

[The paper last read was marked by the clerk 31 O.]

Hon. DAVID M. KEY,

Postmaster-General, Washington, D. C. :

The undersigned, representing the citizens and business men of Bismarck, Dakota Territory, beg to represent that at a recent letting contracts were made for mail service between this place and Tongue River Montana, the same to be weekly. This service is entirely inadequate to meet the proper wants of the country lying between the terminal points, and especially to supply Tongue River and the country beyond. This route is along the proposed route of the Northern Pacific Railway, and will within a brief period of time, in our judgment, become a great thoroughfare of travel and commerce.

In the interest of the Government and of the people we ask that this service be increased to three times per week, and the speed also increased so we can reach Tongue River in sixty-five hours.

Bismarck, D. T., July 22, 1878.

Signed by Lounsberry, postmaster, by another postmaster at Fort Rice, and by ten or a dozen other petitioners.

[The paper last read was marked by the clerk 32 O.]

MILES CITY, MONTANA T.

Hon. D. M. KEY,
Postmaster-Gen'l :

SIR: The undersigned, citizens of Montana Territory, beg leave to state that the mail service on the route between Bismarck and Tongue River is entirely inadequate to the wants of the people now supplied by said route.

The Territory is now settling up very rapidly both east and west of Tongue River, and one trip a week can hardly suffice.

We therefore very respectfully but urgently request that this route be increased to three trips a week, and the schedule to at least sixty-five hours.

Signed by about twenty petitioners.

[The paper last read was marked by the clerk 33 O.]

[Post-office, C. A. Lounsberry, P. M.]

BISMARCK, October 18, 1878.

[SUPERINTENDENT R. R. MAIL SERVICE, Chicago:]

General Miles wishes me to call your attention to the fact that all mail from points east of the Mississippi for Miles City, Fort Keogh, Fort Custer, Tongue River, and all posts or camps on the Yellowstone should be sent via Bismarck. By doing so, 200 miles of staging and 500 miles of railroad and much time will be saved. Stages now run from Bismarck to Fort Keogh in four days. Will you not look into this matter and make the directions deemed advisable?

Very respectfully,

C. A. LOUNSBERRY.

Pinned to that the following:

RAILWAY MAIL SERVICE,
OFFICE OF THE SUPERINTENDENT SIXTH DIVISION,
Chicago, Illinois, October 22, 1878.

Respectfully referred to Hon. Theodore M. Vail, General Superintendant R. M. S., Washington, D. C., for information. Our maps show only a semi-weekly supply for Fort Keogh via Fort Buford, while the supply via Rock Creek, Wyo., seems to be tri-weekly; but we are not sure of the schedule time.

JAMES E. WHITE,
Superintendent.

[The paper last read was marked by the clerk 44 O.]

I come now to the military recommendations inclosed in this jacket, and indorsed on the outside as being recommendations for increase of service and expedition.

FORT KEOGH, M. T., July 28th, 1878.

To the honorable the POSTMASTER-GENERAL,
Washington, D. C. :

MY DEAR SIR: I have the honor to earnestly recommend that the mail facilities between the Yellowstone Valley and the terminus of the Northern Pacific Railway be increased to mail three or six times a week. Aside from the military necessities of this district of at least a thousand troops, the settlements along the Yellowstone and its tributaries are increasing so rapidly as to require mail accommodations at least three times each week. Much of the mail matter is now carried out over the Union Pacific and then by stage through Bozeman, when the whole Territory of Montana would be benefited by the more direct and short route between Montana and Bismarck.

The agricultural, pastoral, and mineral wealth of this region is bringing into this section a large population, and, in my opinion, a much larger number of citizens would be accommodated by this line than are now benefited by the daily mail from Bismarck to the Black Hills.

I remain, sir, with great respect, very truly, yours,

NELSON A. MILES,
Col. and B't Maj. Gen'l, U. S. A., Com'd'g Dist. of Yellowstone.

[The paper last read was marked by the clerk 35 O.]

Mr. WILSON. You stated that the jacket is indorsed so and so.

Mr. BLISS. I will read the jacket in this case.

Mr. WILSON. Read it, and tell the jury who indorsed it.

Mr. BLISS. I am aware of your precise point there.

Mr. WILSON. My point is to get at the truth.

Mr. BLISS. The indorsement is as follows :

Hon. J. P. Kidder, ex-Mayor Charles, of Sioux City, P. M. Bismarck, president N.P. R. R., clerk district court, Hon. M. Maginnis—

Mr. WILSON. [Interposing.] Who wrote that ?

Mr. BLISS. It appears that Mr. Brewer wrote it. I am making no question about that. I simply want his honor to see that the military recommendations are all confined to increase of service, and not to expedition.

Mr. WILSON. I want to call attention to the fact that Turner did not indorse the jacket.

Mr. BLISS. There is no pretense that he did. There are here in this jacket, and it is right to call attention to them three papers. They are stamped as received on the 14th of December, 1878, and are military papers. I have retained them here. The order was made in October, 1878. I have no question that the order cannot be considered as based upon them ; but I found them in the jacket, and I have kept them.

Mr. WILSON. Read them.

Mr. BLISS. [Reading:]

ST. PAUL, MINN. *December 4th, 1878.*

To the honorable POSTMASTER-GENERAL,

Washington, D. C. :

SIR : I have honor to request that the mail service between Bismarck, Dakota, and Fort Keogh, Montana, be increased to a tri-weekly or a daily mail, and to urge its importance, not only for the benefit of the military, but the citizens who are rapidly filling up the Yellowstone region. The military posts of Keogh and Custer are as important as any in the country, and garrisoned by about 1,500 troops. There are at least one thousand settlers in the Yellowstone Valley, dependent principally for their mails on the above route. It is the only direct mail route into the Territory of Montana, and the necessity for the increased mail service is becoming daily more urgent. Several petitions have been forwarded from the settlers, and it is urged as a necessity for military and civil interests.

I have the honor to be sir, very respectfully, your obedient servant,

NELSON A. MILES,

Colonel 5th Infantry, Brevet Major-General, U. S. A.

[1st indorsement.]

HEADQUARTERS DEPARTMENT OF DAKOTA,

St. Paul, Minn., Dec'r 4, 1878.

Respectfully forwarded to the headquarters of the military division of the Missouri:

I strongly and earnestly recommend that the increased mail service asked for herein be granted.

The posts on the Yellowstone are of such great importance that for military reasons alone the communication with them by mail should be *frequent, regular, and certain*. Besides, these posts have very large garrisons, and the population which has clustered around them, already of importance, is constantly increasing ; so that the number of persons dependent for their mails on the route in question and the private interests involved fully justify, in my judgment, the increase asked for.

ALFRED H. TERRY,

Brigadier-General, Commanding.

[2d indorsement.]

HEADQUARTERS MILITARY DIVISION OF THE MO.,

Chicago, December 6th, 1878.

Respectfully forwarded to the Adjutant-General of the Army, in the absence of the lieutenant commanding.

WM. D. WHIPPLE,

Asst. Adjutant-General.

That is indorsed as follows :

CHICAGO, *Dec. 6th, 1878,*
Division Missouri.

Forwards communication from Col. Nelson A. Miles, 5th infantry, requesting that the mail service between Bismarck, D. T., and Fort Keogh, M. T., be increased to a tri-weekly or daily mail.

Official copy.

E. D. TOWNSEND,
Adjutant-General.

A. G. OFFICE, *December 10th, 1878.*

For the honorable Postmaster-General.

[The paper just read was submitted to the clerk to be marked, and was by him marked 36 O.]

Mr. HENKLE. You said that the order was made in October.

Mr. BLISS. October 4 is the date of the jacket.

Mr. HENKLE. The order was not made in fact until the 23d of December.

Mr. BLISS. I see the order here at the bottom. You are right. The date at the bottom is December 23d, 1878. The jacket is dated at the top October 4th, 1878, increasing the service to sixty-five hours. It is really made December 23d, 1878.

The COURT. These military recommendations are not referred to in the indorsement.

Mr. BLISS. Yes, sir; that would make them referred to.

Mr. WILSON. They are part of this jacket, and were all on file at the time this order was made.

Mr. BLISS. That is very clearly so. They were received before this order was made.

The next paper is as follows :

WAR DEPARTMENT,
Washington City, December 12th, 1878.

SIR : I have the honor to transmit for your action, copy of a letter from Col. Nelson A. Miles, 5th Infantry, requesting that the mail service between Bismarck, Dakota Territory, and Fort Keogh, Montana Territory, be increased to a tri-weekly or daily mail.

The general of the Army recommends a tri-weekly mail.

Very respectfully, your obedient servant,

G. W. McCRARY,
Secretary of War.

The honorable the POSTMASTER-GENERAL.

That is indorsed in red ink, as follows :

Official copy respectfully furnished for the information of Col. Nelson A. Miles, 5th Infantry, Washington, D. C.

It is signed in black ink by a signature which I cannot make out, but which looks to be "Drum, Assist. Adjutant-General, A. G. Office, December 19, 1878."

Then another indorsement, which is in black ink, and which is as follows :

I intend to call at the Post-Office Department and urge the increased mail service on this route, as it is most important.

NELSON A. MILES,
Col. and B't Major-Gen'l, U. S. Army.

[The paper last read was submitted to the clerk to be marked, and was by him marked 37 O.]

The next paper is as follows :

WAR DEPARTMENT,
Washington City, December 12, 1878.

SIR: I have the honor to transmit for your action copy of a letter from Col. Nelson A. Miles, 5th Infantry, requesting that the mail service between Bismarck, Dakota Territory, and Fort Keogh, Montana Territory, be increased to a tri-weekly or daily mail.

The General of the Army recommends a tri-weekly mail.

Very respectfully, your obedient servant,

G. W. MCCRARY,
Secretary of War.

The honorable the POSTMASTER-GENERAL:

[The letter last read was submitted to the clerk to be marked, and was by him marked 38 O.]

The next is an order dated August 2, 1879, Bismarck to Fort Keogh, route 35051.

Date August 2, 1879. Territory, Dakota.

No. of route, 35051.

Termini of route, Bismarck and Fort Keogh, Montana.

Length of route, 310 miles.

Number of trips per week, three.

Contractor, John R. Miner.

Pay, \$35,000 per annum.

See memorandum inclosed.

All that is in red ink. Now in black:

1st. From August 11, 1879, increase service three trips per week and allow contractor \$35,000 per annum additional pay, being pro rata.

2nd. Increase pay of subcontractor in like amount.

FRENCH.

[The jacket last read was submitted to the clerk to be marked, and was by him marked 39 O.]

Inclosed in that is the following jacket:

Date, 1879. State, Dak.

No. of route, 35051.

Termini of route, Bismarck, Fort Keogh.

Length of route, 310.

Number of trips per week, three.

Contractor, J. R. Miner.

Pay, \$35,000.

That is in red ink: Then follows a line in black ink:

Hon. G. G. Bennett.

Then again in red ink:

Hon. M. Maginnis, J. P. Kidder, Gen. N. A. Miles, business men of St. Paul and Minneapolis, citizens of Montana, ask for 6 a. w. service.

Hon. H. H. Bingham also asks increase.

Then, again in black:

See inclosure from Helena Daily Herald of May 15th, 1879.

Then, in red ink again:

Frederick Billings, president Northern Pacific R. R. Co., recommends increase of service.

[The jacket just read was submitted to the clerk to be marked, and was by him marked 40 O.]

The next is a letter, and is as follows:

HOUSE OF REPRESENTATIVES,
Washington, D. C., June 18th, 1879.

Hon. THOS. J. BRADY,
Second Ass't P. M. Gen'l:

I have the honor to join the honorable J. P. Kidder, Hon. M. Maginnis, and others recommending increase of service to daily on route from Bismarck to Tongue River. The necessity for daily service on that route is beyond question.

Respectfully,

G. G. BENNETT.

[The letter last read was submitted to the clerk to be marked, and as by him marked 41 O, and then submitted to the jury for inspection.]

The next is a letter, and is as follows:

[Personal.]

WASHINGTON, D. C., June 11th, '79.

MY DEAR GENERAL: The inclosed explains itself. Please file the paper with the her recommendations in the case. The increase seems to be very much needed, and the friends of the interest are very earnest and sincere in the movement. I hope you can see it possible to determine the question favorably before July 1st. Can you let me know just how the case stands and the chances for your favorable action?

Very truly yours,

HENRY H. BINGHAM.

Gen'l BRADY,
Washington, D. C.

Pinned to that is a slip from the Helena Daily Herald which contains an article "What shall be done with the Mormons," and an article entitled "Revival of railroad building," and then an article headed "Struggles and sacrifices of Eastern Montana. Urgent need of an increase of mail service. [Avant Courier, 8th.]" Do you desire me to read it?

The COURT. Oh, the other side can read it.

Mr. BLISS. It is in the jacket. Your honor directed that we should read it all in.

Mr. WILSON. Well, we do not ask that you shall read that.

Mr. TOTTEN. Is the General Bingham who wrote that letter the chairman of the Committee on Post-Offices and Post-Roads?

Mr. BLISS. I presume he is.

Mr. MERRICK. He is from the city of Philadelphia. What does he know about service out in Montana Territory?

Mr. BLISS. Chairman of the Committee on Post-Offices and Post-Roads in the House, and he writes personal letters to General Brady.

Mr. MERRICK. He wasn't chairman of the committee when he wrote that letter.

Mr. WILSON. He was member of the committee, though.

[The letter last read was submitted to the clerk to be marked, and as by him marked 42 O.]

The next is a petition, and is as follows:

ST. PAUL, MINN., Dec. 21st, 1878.

TO THE POSTMASTER-GENERAL:

We, the undersigned, members of the Board of Trade and principal business men of the city of St. Paul, respectfully represent that the mail facilities from the terminus of the Northern Pacific R. R. at Bismarck, west to Fort Keogh and the settlements on the Yellowstone, are wholly and entirely inadequate; that there are considerable settlements in that region, and that they are increasing largely every season; that the promotion of settlements would result in a great saving to the Government by doing away with the necessity of maintaining military posts for protection.

We would further respectfully represent that the corresponding lines of communication in the southwest are supplied with rapid daily mails, while the line above referred to, which is one of the principal lines in the northwest, has only a weekly mail and slow time. We therefore earnestly join in the request of the people of the future great wheat growing region, that the line from Bismarck to Fort Keogh be made a daily line and that the time be reduced to 65 hours.

That is signed by about a page of people. I have no doubt it was intended to be in the other jacket, because it says sixty-five hours, which they already had at the date it was filed. It is in the jacket. It is dated December 21, 1878, but did not reach the department until the 10th of April, 1879, and asks for sixty-five hours, which they then already had.

[The petition last read was submitted to the clerk to be marked, and was by him marked 43 O.]

The next is another petition dated at Minneapolis, Minn., December 33, 1878, and is in precisely the same language.

The COURT. You need not read it. It is a great labor to read all these papers.

Mr. WILSON. I do not ask it, sir.

Mr. BLISS. It reads just as the other, "We, the undersigned, members of the Board of Trade and the principal business men." One is printed in type writer and the other is written.

[The petition last referred to was submitted to the clerk to be marked, and was by him marked 44 O.]

The next is another petition, which reads as follows :

To the Hon. DAVID M. KEY,
Postmaster-General, Washington, D. C.:

SIR: The undersigned, representing the citizens and business men located on the Yellowstone and its tributaries in Montana, beg to represent that at a late letting contracts were made for mailservice between Tongue River, Montana, and Bismarck, Dakota, for service once a week. This service is entirely inadequate to meet the proper wants of the country lying between the terminal points, but more especially to supply Tongue River and the country beyond. This route is along the proposed route of the Northern Pacific Railway, and will within a brief period, in our judgment, become a great thoroughfare of travel and commerce.

In the interest of the government and the people we ask that you increase this service to a daily mail. There are at least two thousand people now along the line of the Yellowstone and between that valley and Bismarck, and by establishing this direct mail route the whole business interests of Montana are benefited.

That is signed by a postmaster and two pages of petitioners. I see none with any handle.

Mr. WILSON. Read the indorsement on the back of it.

Mr. BLISS. [Reading:]

HEADQUARTERS DISTRICT OF YELLOWSTONE,
FORT KEOGH, MONTANA, July 31, 1878.

I would earnestly indorse the above petition, and add that this line is the only direct one between the settlements of Montana and the East, and I consider it important and necessary not only for the thousands of citizens, but the military that occupy the Yellowstone Valley and Western Montana.

NELSON A. MILES,
Colonel and Bt. Maj.-Gen'l U. S. Army, Comm'd'g Dist. of Yellowstone.

[The petition just read was submitted to the clerk to be marked, and was by him marked 45 O.]

The next is a letter, and is as follows :

HOUSE OF REPRESENTATIVES,
WASHINGTON, D. C., March 1st, 1879.

Hon. D. M. KEY,
Postmaster-General :

SIR: I desire to call your attention to the necessity of daily mail service from Bismarck to Fort Keogh, in the Valley of the Yellowstone.

The tide of emigration which precedes the building of a railroad on the frontier is always large. Parties always seek for locations on the probable line of a new road.

The Northern Pacific Company have contracted for one hundred miles the coming season, and expect to push the road to rapid completion to the Yellowstone. The large

settlements already in that valley, as well as the military, are justly entitled to daily service, and I earnestly recommend that the service be so increased.

Respectfully,

J. P. KIDDER,

The indorsement on that is as follows :

Heartily endorse the within letter. Have previously made recommendations to this effect, which are on file in the department. Hope the request may be granted.

MARTIN MAGINNIS.

[The letter last read was submitted to the clerk to be marked, and was by him marked 46 O, and submitted to the jury for inspection.]

Mr. HENKLE. Why do you not pass them all over?

Mr. BLISS. Because some of them are in familiar handwriting, and others are not. We always like to see our old friends.

The next is a letter, and is as follows :

NORTHERN PACIFIC RAILROAD COMPANY,
GENERAL OFFICE, NO. 23 5TH AVENUE, NEW YORK CITY,
July 31st, 1879.

Hon. THOS. J. BRADY,

Second Assistant Postmaster-General, Washington, D. C. :

SIR: The Northern Pacific Railroad is actively pushing track to the westward. It is imperative and of national importance that in the interest of this great work we should be reinforced in legitimate modes by the General Government. Central Montana, our immediate objective point, is only about 600 miles distant from Bismarck, yet the bulk of the emigrant and business population of the Northwest have to take a circuitous route of over two thousand miles to reach Helena. We expect to cover two hundred miles of the intervening distance in the next 12 months, and we urgently ask that daily mail service (Sundays excepted) be at once established between our roads and the daily lines permeating Montana. This will not only facilitate our railroad operations, but is an independent and absolute necessity to the many hundreds of people who are pushing in advance of our work. The Yellowstone and its tributaries are beyond comparison the richest of the Government lands still open to settlement, and the present tide of emigration promises many thousands of settlers in that region who will prove a perpetual barrier to hostile Indians from the North, while keeping those south of that line in subjection. Forts Stevenson, Buford, Keogh, Custer, and Ellis will soon be surrounded by a class of settlers on whom they can draw not only for support, but assistance in danger.

From any point you view this request for rapid and convenient mail service, it seems to be the duty of the Post-Office Department to at once put it in operation.

Very respectfully, your ob't s'v't,

FREDERICK BILLING,
President of the Northern P. R. R. Co.

That is indorsed as follows :

BREWER: Increase Bismarck to Tongue River, as requested within, to 6 t. w.

BRADY.

Make the order to commence as quickly as cont'r can put on the increased service.
B.

That is in black ink. Then in red ink :

Frederick Billings, president Northern Pacific Railroad Company, asks increase of service to 6 times a week.

[The letter last read was submitted to the clerk to be marked, and was by him marked 47 O.]

The next is a jacket and is as follows :

Date, 1879, Sept. 30th. State, Dak.

No. of route, 35051.

Termini of route Bismarck, Fort Keogh.

No. 14336—90

Length of route, 310.
 Number of trips per week, six.
 Contractor, J. R. Miner.
 Pay, \$70,000.
 P. M. & contr., ask. dy. schl.

That is in red ink ; now in black :

L. B. daily ex. Sn. 11 p. m.
 Ar. F^t K. in 65 hours.
 L. F^t K. daily ex. Sun. 7 a. m.
 Ar. B. in 65 hours.
 Adopt above.

BRADY.

Inside is a schedule recommending that signed by the postmasters at Fort Keogh and at Bismarck, and by the contractor.

[The papers last read and referred to were submitted to the clerk to be marked, and were by him marked, respectively, 48 O and 49 O.]

I have, sir, on this route eight or ten witnesses. Shall I commence the oral evidence this afternoon ?

The COURT. Oh, yes.

Mr. BLISS. Call Mr. Pennell.

Mr. HENKLE. Colonel Bliss, Mr. Brewer is here ; we want to ask him a question.

Mr. BLISS. In further cross-examination ?

Mr. HENKLE. Yes, sir.

Mr. BLISS. I have no objection, then.

GEORGE J. BREWER recalled and further cross-examined.

By Mr. HINE :

Q. Has it not been the custom of the department to take the oath of the subcontractor as to the number of animals and horses required on the route proposed to be expedited ?—A. It has of late, sir.

Mr. MERRICK. Wait a moment. Can the custom of the department be proved as against one of its rules, your honor ?

The COURT. Oh, yes ; in a criminal case.

Mr. HINE. That is all.

By Mr. BLISS :

Q. You say it has of late. What do you mean by that ?—A. When that memorandum that was in that case was made, I was not aware that a subcontractor could make oath as to the stock he carried ; for that reason I put the memorandum in. But since then it has been quite frequently done.

Q. Has there been any expedition within the last year ?—A. Not within the last year.

Q. Then it was frequently done down to the time Mr. Brady went out of office, you mean. Has it been done since ?—A. I have not known of a case of expedition since.

The COURT. In this case, under that subcontract, Vaile was apparently the real assignee.

Mr. HENKLE. He took the whole interest.

By Mr. BLISS :

Q. I notice that inside of the jacket on which the order for expedition was made on this Bismarck and Tongue River route there is another jacket which is marked 22 O. [Submitting paper to witness.] Is that indorsement in your handwriting ?—A. Yes, sir.

Q. Now, I notice here that that jacket says: "Citizens of Bismarck ask for tri-weekly service and expedited schedule"—

Mr. HENKLE. [Interposing.] What are you proposing to do now?

Mr. BLISS. I am going to ask him a question.

Q. [Continuing.] "The contractor furnishes sworn statements that for service three times a week on present schedule eleven men and twelve animals are required; that thirty-seven men and seventy-three animals will be required on a sixty-five-hour schedule." Do you know anything about that sworn statement?—A. It was there.

Q. There was an original affidavit to that effect there?—A. There was, certainly.

Q. Do you know what became of it?—A. I do not.

Q. And you made up that jacket with the case before you?—A. Yes, sir.

Q. Those figures on the back of that jacket are whose?—A. Mine.

Q. Then this final jacket says: "Contractor files his sworn statement that twelve men and thirteen animals are required for tri-weekly service on present schedule; that for a sixty-five-hour schedule one hundred and fifty men and one hundred and fifty horses would be required." Do you know how that change came to be made; the jacket first indorsed referred to thirty-seven horses, and then to one hundred and fifty?—A. I do not; that was the original case; it was made up right.

Q. And you had before you then the sworn statement of the contractor that it would require for a sixty-five-hour schedule thirty-seven men and seventy-three animals; did you?—A. That statement was there; yes, sir.

Q. Do you remember when you last saw it?—A. No; I do not.

By Mr. WILSON:

Q. The probability is that you turned it over to Mr. Woodward, is it not?—A. I do not know.

By Mr. BLISS:

Q. When you made this final indorsement on the 4th of October, 1878, you made no reference to that other affidavit, but referred to an affidavit of one hundred and fifty horses and one hundred and fifty men?—A. That is the second case that was made up.

Q. But it is all in one jacket?—A. I am aware of that.

Q. How did it happen?—A. I can't tell you.

Q. First you made up a jacket?—A. I made up a jacket, and that was submitted to General Brady, and then the larger oath came in in a second jacket.

Q. And it was on the second jacket that the order for expedition was made?—A. Yes, sir.

By Mr. WILSON:

Q. [Submitting paper marked 39 O to witness.] Is that your handwriting?—A. That is Mr. William H. Turner's writing.

Q. "See memorandum inclosed." Do you know where that memorandum is?—A. I do not, sir.

By Mr. BLISS:

Q. When a paper says "See memorandum inclosed," does it not ordinarily refer to an unfinished jacket like that inclosed [submitting paper marked 40 O to witness]?—A. It comes from the fact that the lower indorsement, "See memorandum inclosed," is in Mr. Turner's writing, and I suppose that is what he referred to.

Mr. MERRICK. [To Mr. Wilson.] If you have any other memorandum bring it in.

Mr. WILSON. I think you have it.

Mr. BLISS. I should like very much to find that affidavit.

Mr. WILSON. So would we. We would like to have these records just as they were.

By Mr. WILSON:

Q. [Submitting a paper to witness.] Whose figures are these on this paper?—A. Mine, sir.

Q. Who did the figuring on which the amount was fixed?—A. Those are my figures.

Mr. MERRICK. [To Mr. Wilson.] On what are those figures based?

Mr. WILSON. They show for themselves.

Mr. BLISS. He swore that they were based on the thirty-seven men and seventy-three animals.

Mr. MERRICK. That is the missing affidavit.

By Mr. WILSON:

Q. [Submitting paper marked 22 O to witness.] State what the amount is as shown by those figures.—A. The increase for twice a week's service is \$4,700, and for expedition, \$26,884.78; aggregate, \$31,584.78.

Q. That figuring is made on what number of men and animals?—A. Eleven men and twelve animals for the service on present schedule, and thirty-seven men and seventy-three animals on the expedited schedule.

By Mr. BLISS:

Q. Now, Mr. Brewer, the order recites that they allow contractor \$27,950 per annum additional pay, being less than pro rata, as appeared by his sworn statement of stock and carriers required. That amount of \$27,950 is about a thousand dollars more than stated here. Upon what affidavit was that order based?—A. It was based on the affidavit of one hundred and fifty men and one hundred and fifty animals.

By Mr. WILSON:

Q. Now, Mr. Brewer, you make the calculation on one hundred and fifty men and one hundred and fifty animals and see what it would amount to?

Mr. MERRICK. The order says less than pro rata.

Mr. WILSON. I want him to make that calculation, because whenever he makes that calculation it will appear that it was on the small number that the calculation was made.

Mr. BLISS. Yes; but your contractor puts in an offer to do the service, and says it is less than pro rata.

Mr. WILSON. It is less than pro rata.

Mr. MERRICK. Less than pro rata, according to his first affidavit. Do not let us confuse these things. There are two affidavits.

A. [After figuring.] It would make an allowance for \$77,562 for expedition on that.

Q. For expedition alone?—A. For expedition alone. Four thousand seven hundred dollars for increase of service and \$77,562 for expedition.

Q. That is to say, if you were to take the basis of one hundred and fifty men and horses. Is that for three trips a week or six?—A. Three.

Q. How much will it be for six ?—A. One hundred and fifty-five thousand dollars in round numbers.

Q. So that it is quite apparent that no such number of men and animals was used by the department in making the arrangement for the increase and expedition ?—A. That oath was on file.

Mr. WILSON. I am not talking about that.

The WITNESS. That is the oath that was used in the last order.

Q. Specifying one hundred fifty men and animals ?—A. Yes, sir.

Q. But they did not allow for that number ?—A. Certainly not.

Q. I say, therefore, that it is quite apparent that no such number of men and animals was conceded by the department in making that order of increase and expedition. A. That is not for me to decide.

Q. The figures show that, do they not ?

Mr. MERRICK. Wait a moment; the figures speak for themselves.

A. The contractor made an order of what he would do it for, the offer was accepted, and the offer was made based upon that offer.

Q. The amount is a great deal less than it would have come to if reckoned on the basis of the affidavit ?—A. A great deal less.

Q. Less than half, is it not ?—A. Yes, sir.

By Mr. BLISS :

Q. But it is more than would have been required on the first affidavit of the amount that the department allowed ?—A. That is my recollection.

Q. Can you fix the time so as to state how long before you made up the second jacket it was after you made up the first jacket ?—A. I can probably arrive at some conclusion in regard to it. [After examining the papers.] I cannot tell what was inside the original paper and what was not inside.

Mr. BLISS. The contractor's oath is dated the 4th of October for one hundred and fifty men and animals.

The WITNESS. It would be impossible for me to tell.

Q. [Indicating paper.] That was made first, however, was it not ?—A. Yes, sir.

Q. [Submitting paper.] Please look at these figures on the back of the contractor's statement, being 7 O, and see if they are in your handwriting ?—A. Yes, sir.

Q. Are those figures a calculation based on one hundred and fifty men ?—A. Yes, sir; they are based on that, but there seems to be a difference here of \$12 somewhere or other.

Q. On the back of that oath you made a calculation of the amount on the basis of the oath ?—A. Yes, sir.

Q. Was that made at the time ?—A. It was made on or about the 4th of October, when it was presented.

By Mr. WILSON :

Q. That is just what you made a moment ago in substance.—A. In substance it is the same; only a difference of \$12 that I see.

Mr. BLISS. That is all.

The COURT. [At 3.10 p. m.] The jury are adjourned till to-morrow morning.

At 3 o'clock and 15 minutes p.m. the court adjourned until to-morrow morning at 10 o'clock.

No. 14336—91

FRIDAY, JULY 7, 1882.

The court met at 10 o'clock a. m.

Present, counsel for the Government and for the defendants.

JOSEPH PENNELL sworn and examined.

By Mr. BLISS :

Question. What is your business ?—Answer. Contractor.

Q. Where do you live ?—A. My home is now at Billings, Montana.

Q. Do you know John W. Dorsey ?—A. Yes, sir.

Q. How long have you known him ?—A. Since the spring of 1878.

Q. Do you know M. C. Rerdell ?—A. I am not personally acquainted with him, but I have met him.

Q. Had you ever anything to do with the mail route from Bismarck to Fort Keogh, No. 35051 ?—A. Yes, sir.

Q. What was your first connection with that route ?—A. Buying stock, building the ranches, and locating the road.

Q. When did that commence ?—A. The first mail started from Bismarck, July 1, 1878.

Q. Who employed you at that time ?—A. John W. Dorsey.

Q. The first mail started at that time; was it kept up continuously after that ?—A. Yes, sir.

Q. You say that you bought the stock; how much stock did you buy, and where did you buy it ?

Mr. WILSON. Is that material, your honor ?

The COURT. It may be. I will not undertake to exclude it now.

A. I left the road in October, and up to that time I bought about twenty-five head, to the best of my knowledge.

Q. What was done with that stock ?—A. That many were used on the Bismarck and Fort Keogh road.

Q. You said that you built the ranches. What do you mean by that ?—A. The ranches at the stations where the teams were kept and the men were supplied with food.

Q. You built them through the whole length of the road ?—A. Where there was not any conveniences to take care of the stock and men ranches were put up.

Q. Do you remember how many ranches you built ?—A. I think we built twelve at that time.

Q. How far apart were those ranches ?—A. Fifteen to twenty miles.

Q. Can you name the stations ?—A. Yes, sir.

Q. Please name them, starting from Bismarck.—A. The first station out of Bismarck was Hart River; the next, what we call Coal Bank; the next station was Muddy; the next was Spring Station, and the next was Young Man's Butte. There was a man had a house there. There was no station owned by the company. The next was Green River, and then there was a station in the winter season afterwards at Ploughed Ground; at least I heard that they had one; I never saw any station there. The next station was Antelope; the next Beaver; the next Little Missouri; the next Bracket; the next Pennell; the next O'Fallen; the next Whitney; and the next Powder River. There was a station half way between there and Miles City, or rather a ranch kept by a man. I don't think the company had any station there of their own.

Q. You built all these ranches that you have named, did you ?—A. Ploughed Ground station ranch I did not build, and Young Man's Butte station I did not build. The balance we built at that time.

Q. After building the ranches was anybody placed in charge of them?—A. Yes; most of them.

Q. How far apart were the men stationed at the ranches?—A. About every other ranch there was a man placed; skipping one.

Q. About how far apart did that bring the ranches at which men were stationed?—A. Thirty or forty miles.

Q. How many men did you have in your employ while making these stations?—A. Something over twenty; twenty-five, I think, altogether.

Q. By whom were these men paid?—A. Mr. John W. Dorsey saw to the paying of them; he drew drafts on a man by the name of Peck, I think.

Q. Did you at that time see Mr. Rerdell, or about that time?—A. I saw him about the 1st of July.

Q. Where did you see him?—A. At Bismarck, Dakota.

Q. Did you have any conversation with him?—A. Yes, sir; I had some.

Q. I would like to ask you whether you had any conversation as to the subject of petitions.

Mr. WILSON. If your honor please, I will have to object to this.

The COURT. I will allow it to go in and see what it is.

Mr. WILSON. I will reserve an exception.

The COURT. It tends to show how the petitions were gotten up, I suppose.

A. Yes, sir; we had a talk about petitions.

Q. Tell us what it was.—A. He was speaking about drawing up a petition to have the road lengthened; he wanted to get up a petition from a settlement lying north of the road; about one hundred and seventy miles west of Bismarck, and north of the main line about fifty miles.

Q. He wanted you to get up a petition representing the inhabitants of a settlement how far north of the road?—A. Well, he did not say particularly; fifty or sixty miles.

Q. And how far west of Bismarck?—A. About one hundred and seventy miles.

Q. Who was to sign that petition?

Mr. WILSON. If your honor please, it seems to me that is not competent.

The COURT. I will admit it.

A. The crews employed.

Q. The men in your employ?—A. Yes, sir.

Q. Was there any actual settlement from which the petition was to come?—A. No, sir.

Q. There was no settlement there at all?—A. No, sir.

Q. Was anything said in the conversation as to what the petition was to be, and what was to ask?—A. It was to ask for establishing a post-office, and some one of the crew appointed postmaster.

Q. Was the place where the paper settlement was to be located fixed in the conversation? A. It was to be west of the Little Missouri River at any convenient point.

Q. Did you get up such a petition?—A. No, sir; it never was done to my knowledge.

Q. Whom did you say was to be postmaster?—A. The ranchman that would be nearest to that point.

Q. The particular man was not designated?—A. No, sir.

Q. You say you remained on that route until when?—A. Some time in October, 1878.

Q. Speaking of petitions, did you at any time have any conversation with Mr. Dorsey as to petitions?—A. I think there was talk of a petition being gotten up for increase of service.

Q. What was the talk?—A. The talk was to have a petition drawn up and circulated—

Mr. HENKLE. [Interposing.] Is that admissible, your honor?

The COURT. I think so.

Mr. HENKLE. We except.

Q. What was it? Please continue your answer.—A. A petition was to be drawn up and signed in Bismarck and taken to Keogh and signed and at Miles City.

Q. While you were there on the route, do you know how many trips a week the mail made?—A. I think they made about one trip a week while I was there; endeavored to.

Q. Do you know how many men and horses were employed on the route?—A. At the time I left, there was twenty-five head on the line.

Q. Twenty-five head of horses?—A. Horses and mules.

Q. How many men?—A. I could not say exactly, but I should think about sixteen.

Q. Did that include ranchmen?—A. Yes, sir.

Q. How many of these men were carriers?—A. Four or five; about five, I think, were carriers.

Q. What was the reason for building ranches of which only every other one was occupied?

Mr. WILSON. Is that proper, your honor?

The COURT. Oh, yes; we will let all he knows about that route go in.

Mr. WILSON. We will take an exception.

The COURT. We cannot cut a piece out here, and let the rest go in.

Mr. TOTTEN. If your honor please, this man probably does not know. If he knows anything about it, of course, under your honor's ruling it is admissible.

The COURT. If he does not know he probably will not tell.

Mr. TOTTEN. He can tell what his reasons were, but cannot speak as to the reasons of other people.

The WITNESS. What is the question?

Mr. BLISS. My question was: What was the reason for building so many ranches and occupying only every other one.

Mr. HINE. I desire to enter an objection especially to that question. His reason may not be our reason; although the witness is telling what he thinks is the truth, I have no doubt.

Mr. BLISS. I do not ask for his own reason, but if he knows what the actual reason was.

Mr. HINE. I object to that.

The COURT. The objection is overruled.

A. I cannot tell what their reasons were; only what they told me their reasons were.

Q. What did they tell you?—A. The reasons they told me for building the ranches was increase of service.

Q. Who told you that?—A. John W. Dorsey; and the reasons for not using only half of them, because they were only half of them needed for service once a week.

Q. But they built the additional ranches expecting what?—A. Increase of service.

Q. Do you know what the cost of building those ranches was?

Mr. HINE. I object to that question as immaterial.

The COURT. The objection is overruled.

Mr. HINE. Exception.

A. At the time I left the road in October, I think the expense was something over \$6,000.

By the COURT:

Q. For building them all?—A. Yes, sir.

By Mr. BLISS:

Q. Were they finished?—A. Yes, sir; nearly finished; so that they could be occupied. I will not say they were all finished.

Mr. COX. [A juror.] Does that include the stock, or simply building the ranches?

Mr. BLISS. Simply building the ranches was the expense that the witness named; \$6,000 [to the witness] was it not?

The WITNESS. No, sir; I don't think it cost that much to build the ranches alone.

Q. Did it include also the buying of the stock?—A. No, sir; I think all the expense outside of the stock.

Mr. BLISS. Your honor will remember that the contract price for carrying the mail at that time was only \$2,350 a year.

Q. Did you ever have any conversation with Mr. Dorsey or Mr. Rerdell, either or both, at which there was any figuring up of the amount of stock which would be required for increased trips and reduction of time?—A. I figured with Mr. Rerdell about the number of stock it would take on an increase of service.

Q. On what increase of service?—A. Three times a week, I think.

Q. And on what schedule of time?—A. I am not positive, but I think it was sixty-five hours.

Q. Do you remember what number you figured, and what number Mr. Rerdell figured?

Mr. HENKLE. If the court please, this witness has not shown that he is competent to figure on that subject.

The COURT. I suppose almost any man can figure on that subject.

Mr. HENKLE. Hardly, your honor. I suspect you or I would make poor figures at it.

The COURT. I know it requires some experience to be an expert in that business, but we will let him testify.

Mr. HENKLE. He says he was a contractor and built the ranches, but does not say he has had any experience in running coaches.

The COURT. He was employed there from July to October.

Mr. BLISS. He bought the stock, and this is an actual transaction with one of the defendants.

Mr. HENKLE. We object to the question, your honor.

The COURT. The objection is overruled.

Mr. HENKLE. We desire an exception.

Mr. TOTTEN. This all goes in under our general exception.

The COURT. Oh, yes.

Q. Do you remember what number of men and animals you figured as likely to be, in your opinion, needed in three trips, and the schedule proposed, and what number Mr. Rerdell fixed?—A. On three trips a week, I think I figured forty head of stock.

Q. How many drivers?—A. [After a pause.] Eight I think; I am not positive about that.

Q. How many ranchmen or station-keepers did you figure for?—A. A ranchman to each ranch.

Q. How many was that?—A. That would be fifteen, I think, besides the end ranches.

Q. Do you remember what Mr. Rerdell's estimate was?—A. I do not remember his number now.

Q. Was it larger or smaller than yours?—A. About as many again as mine; about twice as many as mine.

Q. When was this conversation with Mr. Rerdell?—A. Some time in July; the first part of July.

Q. Eighteen hundred and seventy-eight?—A. Yes, sir.

Q. Did you, at any time, have any conversation with Mr. Dorsey as to increase and expedition?—A. Mr. Dorsey said he expected an increase. I do not know that I ever did any figuring with him.

Mr. HENKLE. Colonel Bliss, excuse me, but the witness did not say that that included expedition. I do not know what he meant.

Mr. BLISS. He said on a decreased schedule, which he thought was sixty-five hours. I asked him the question subsequently on what schedule, and he said he thought sixty-five hours.

Mr. HENKLE. Just ask him if he means that.

Mr. MERRICK. He said sixty-five hours expressly.

By the COURT :

Q. Was that your understanding?—A. I think the time was to be sixty-five hours, as near as I can remember.

By Mr. BLISS:

Q. Was anything said in this conversation with Mr. Dorsey as to the amount likely to be allowed for expedition, or anything of that sort? Give us that whole conversation.—A. Well, there was a conversation in regard to the price, that came up in this way: Dorsey wanted me to go in partners with him and run that route, as I had stock enough of my own to run it; and I didn't want to do it, for the reason that I thought there was no money in it, and he at that time said that there would be an increase, and it would not be less than \$25,000.

Q. If you had gone in, what interest would you have had with him?—A. One-half.

Q. Was anything said as to how the increase was to be obtained, or anything of that sort? Give us that whole conversation if you can remember it.—A. The increase was to be obtained in Washington. I don't think that he named any persons particularly. He said he had a brother in the Senate to help the thing through.

Q. Where did this conversation occur?—A. It occurred in Bismarck.

Q. About when?—A. The 1st of July, before we commenced building the ranches.

Q. Was anything said about more than one increase as likely to be obtained?—A. Yes, sir.

Q. What was it?—A. He said there would surely be two inside of a year.

Q. What was the second increase to be?—A. Six or seven trips a week.

Q. Why did you leave the route?—A. When I got through building the ranches, I about that time took a contract to freight to the Black Hills, which took all my time.

CROSS-EXAMINATION.

By Mr. WILSON :

Q. How long have you lived in that country?—A. I have lived at Bismarck and west of there since 1872.

Q. Will you tell the jury when the Northern Pacific Railroad was

laid out between Bismarck and Tongue River?—A. I think the first preliminary was run in 1871.

Q. When did they make their final location of the road, their definite location, if you remember?—A. There have been so many lines run through there I could not say when they made the final location.

Q. I do not know whether you know it or not, but they did make a final and definite location of the road which has since been built. Can you tell the jury about what time the company made that definite location?—A. I think it was done in 1878; I am not positive.

Q. It was pretty early in 1878, was it not?—A. General Rosser came through on the line in 1878 to our camp at Little Missouri, half way between Bismarck and Fort Keogh, about the 1st of August. I think that was the time that the line was finally located.

Q. Since that time the road has been built, I believe?—A. It has been built over this route that he located, I think, at that time.

Q. Can you tell the jury about what time that road was finished to Fort Keogh, or Miles City?—A. Some time in December, I think, of last season.

Q. Of last year?—A. Yes, sir.

Q. The road has been in process of construction between Bismarck and Fort Keogh, or Miles City, since 1878, and was finished along last fall or the early part of the winter. Is that correct?—A. Yes, sir; I think they did something in 1878 on the road.

Q. Can you tell the jury about what time the road was completed to Bismarck?—A. June, 1873, or July.

Q. So that the road has been at Bismarck for several years, and has been at a stand-still That is to say, there has been no further construction until 1878, and then active operations began in the matter of the construction of the road?—A. Yes, sir.

Q. Resulting, as you have said, in the completion of the road to Fort Keogh in the fall or December of last year. Now, when the construction of that road was resumed, the fact was that the people began to come in there and settle along the line of this proposed road, was it not?—A. Yes, sir.

Q. And it was anticipated that there would be a great influx of people in that direction, was it not?—A. Yes, sir; it was. Naturally people suppose when a road goes through there will be some settlers.

Q. What kind of a wheat region is that through there?—A. Between Bismarck and Miles City there has not been much of any wheat raised yet.

Q. But that region of country through there is considered one of the great wheat countries of the world, is it not?—A. It is east of Bismarck, the Red River country.

Q. And the people are pushing on beyond that, west of Bismarck and Fort Keogh, are they not?—A. Yes, sir; west of Keogh they are considerably, in the valley of the Yellowstone.

Q. So that at the time that Mr. Rerdell came out there, and at the time you saw Mr. Dorsey there was anticipation of a great increase of immigration and settlement along the line of that road?—A. Not much at that time. At that time no one thought that the Northern Pacific would ever move another foot.

Q. In July, 1878?—A. That was the impression of the people.

Q. And yet it did begin moving right away?—A. Yes, sir; soon afterwards.

Q. What kind of a grazing country is that between Bismarck and Keogh?—A. Good.

Q. I wish you would give the jury a pretty definite idea of how good it is.—A. It is like the most of Montana; it is all good grazing country.

Q. It is a very fine grazing country, is it not?—A. Yes, sir; after you get west of the Little Missouri and up the tributaries and those streams it is good.

Q. You have been at Fort Keogh, I suppose?—A. Yes, sir.

Q. It is true that there was a large number of soldiers stationed there—officers of the Army?—A. Yes, sir.

Q. Were you aware of the fact those officers were anxious to have an increase and expedition of service on this route?—A. Yes, sir.

Q. That is the fact?—A. Yes, sir.

Q. Do you know the reasons they gave for asking that increase and expedition?

Mr. BLISS. I object to the reason they gave out there. The reasons that they gave here are proper. But inasmuch as there is not a petition here from any officer suggesting expedition—they are all confined to increase of service—I object. Whatever the officers may have said out there cannot have any bearing.

Mr. WILSON. You have been talking about increasing this twice.

The COURT. I think I will allow that question to be put.

By Mr. WILSON:

Q. [Resuming.] Do you know the reason that he had for having this increase of service? I will use the word "increase," as "expedition" is so offensive to Colonel Bliss.—A. I do not know as I can give the reason, except the general reason that people like to get their mail often. Every one likes to get his mail often. If you lived in a country like that, you would like to get you mail often.

Q. To get their mail to them?

The COURT. To get their mail often.

Mr. WILSON. I beg pardon; I did not understand the witness.

Q. [Resuming.] They not only wanted it often, but they wanted it expeditiously, too, did they not?—A. I never heard them say.

Q. You never heard them say anything about that?—A. No, sir.

Q. Well, we will leave that, then, for the jury to come to a conclusion about. Were you aware of the fact that petitions were circulated and signed at Bismarck, and Miles City, and Keogh for expedition and increase of service?—A. I have heard that there were petitions circulated, but I do not remember that I ever saw them.

Q. These petitions stated in general that there was large emigration to that country; that it is exceedingly important on account of the filling up of the country, and on account of the great wheat-growing region that lies around there, and other interests, and that it was necessary to have these increases and expedition. Do you wish to be understood as saying that the reasons that are given in those petitions are not true, or were they true?—A. I think the reasons were stretched a little.

Q. And if General Miles wrote urgent letters to the department stating that this service was important—

The COURT. [Interposing,] Well, now, you are coming to what I think is not proper cross-examination or examination either—comparing what one man says with what another says. Putting a hypothetical case I do not think is proper.

Mr. WILSON. I was simply going to ask if he thought General Miles had stretched a little.

Mr. BLISS. You had better show him what General Miles said then.

Mr. WILSON. I am willing to do that if you will hand me General Miles's letter.

The COURT. I do not want his opinion at all of whether or not General Miles stretched it. We do not want the opinion of the witness at all. We want his facts.

Mr. HENKLE. He has already given his opinion that they stretched it a little in the petition.

The COURT. But we cannot control the expressions of an opinion sometimes by a witness.

Mr. MERRICK. That was brought out by you.

Mr. BLISS. Brought out by a specific question.

Mr. WILSON. If your honor please, I will withdraw it. I do not care anything about it. I think the witness will state what he understands to be the facts to the jury, so I do not care about that.

Q. [Resuming.] You have stated that the Northern Pacific terminated at Bismarck, and had stood there for quite a number of years, without making any further progress to the westward?—A. Yes, sir.

The COURT. Stood there for five years—from 1873 to 1878.

The WITNESS. There was not very much done in 1878.

Q. [Resuming.] How large a place was Bismarck at that time?—A. About three thousand inhabitants.

Q. And how large is it now?—A. It is not very much larger.

Q. How did the mails get from Bismarck around into Montana? We have a little map here that is very inaccurate and defective, and I will therefore be pardoned for showing the witness this large one. [Submitting a large map to witness, and indicating.] Here is Bismarck, and here is Miles City, and here is Montana off in here?—A. The mail in the Yellowstone Valley, I think, most of it, I am sure all of it, went over the route to Fort Buford and then up the Yellowstone to Miles City; but the mail in Montana went by the Union Pacific road.

Q. [Indicating on map.] It came from Bismarck back here to Saint Paul, then down to Omaha, on across here, striking the Union Pacific at some other point on the route, then out to Ogden?—A. Somewheres in that country.

Q. You know where the Utah and Northern is now?—A. Yes, sir.

Q. And then up into Northern Montana?—A. Yes, sir.

Q. That was the mode of their getting their mails around in that way?—A. I think it might have been.

Q. This is the same map that I used in my opening statement. Now, I will follow this. I want you to state to the jury if I give the correct indications. [Indicating.] This is the river running around up here. Here are these forts around here, are they?—A. Yes, sir.

Q. Then coming down into Miles City there? [Indicating.]—A. Yes, sir.

Q. That was one way. That is the way they supplied Miles City. Now, Northern Montana lies off in here. They came back here? [Indicating.]

Mr. BLISS. Came back from where?

Q. Came from Bismarck back into Saint Paul, down to Omaha, on the Union Pacific road, out to Salt Lake City, on to Ogden, then by the route this way [indicating] into Northern Montana. Have I pointed it out correctly on the map?—A. Yes, sir; that I think to be the way the mail would have had to have gone before 1878 from Bismarck.

Q. Now, Miles City was the border of the settlements in Montana, was it not?—A. Yes, sir.

Q. And Bismarck was the border of the settlements on the east?—A. Yes, sir.

Q. So that the establishment of this route was the connection of two border settlements, Montana on the west and this region of country on the east.

Mr. HINE. Won't you repeat that? We cannot hear here on account of the noise of the hammering in the other building.

Mr. WILSON. I will repeat it so that the jury will understand it if they did not hear what I said.

Q. [Resuming.] Bismarck was a sort of border settlement on the east—at the border on the east, was it?—A. Yes, sir.

Q. And Miles City at the border on the west, and this route connected those two border places and enabled the mail, instead of going up around here, or instead of coming way round here into Montana, to go straight across here into Montana. [Indicating.]—A. Yes, sir. If you will allow me, I will explain.

Q. Certainly you can explain.—A. Bismarck was the last settlement of any size west. They went across the country three hundred miles, and here was Fort Keogh established [indicating], and around that fort was a little settlement, and there were no more settlements to amount to anything; only a little along the river, at that time, until you went across the mountains.

Q. [Indicating.] Got over into this country?—A. Got over into Roseman and Helena, and into that country.

Q. Now, that was the geographical situation?—A. Yes, sir.

Q. Now, you went there, as I understand you, and bought stock to stock this route in July, 1878. Did you go there before the 1st of July?—A. No, sir; I think we bought some stock before the 1st of July. They started out on the first.

Q. Before I take that up, however, there is another matter that I almost forgot. What time did that Indian war break out there?

The WITNESS. With reference to the massacre of General Custer?

Mr. WILSON. Yes, sir.

A. That was in 1876.

Q. How long did those Indians continue hostile; how long were they wandering about through there?—A. There has been no general army of them since 1876, but there have been small scouting parties out from the agencies ever since, and probably are now.

Q. Now, the result of that was what, so far as the stationing of troops at Fort Keogh was concerned?—A. They were stationed there after the massacre of General Custer.

Q. And how many were stationed there, and how long were they kept there?—A. I think it is a ten company post or twelve. I am not positive. They are there yet; the post is still there.

Q. Do you know how many companies they keep there now?—A. I do not.

Q. Now, I will come back. You went there about the 1st of July, you say, 1878, and bought some stock?

The WITNESS. Went where?

Mr. WILSON. Went out on to this line; out on this mail route.

A. We bought some stock, I think, the last of May. We bought some stock, perhaps two or three head, and sent one team out with the mail. They left Bismarck on the 1st of July. I think it was right after that we started to Saint Louis. I did, in company with John W. Dorsey, and bought eighteen head of stock and put fourteen head of that stock on to the Bismarck and Fort Keogh road.

Q. Why did you have to go as far as Saint Louis to get stock?—A. Because we could buy them cheaper.

Q. Had the stock been run out of that country by the Indians?—A. No, sir; not very much of it.

By the COURT:

Q. Do the Indians out there use ponies?—A. Yes, sir.

Q. They keep their own and take the horses of the white men, too?—A. Yes, sir.

Q. That made horses scarce?—A. Well, the Indians never take any stock around where I have been. I have been acquainted with the Black Hills for four years, and the Indians never stole a head from me, and I have been in the Territory all the time.

By Mr. WILSON:

Q. They have stolen a great many from other traders, have they not?—A. They have about two or three times to my knowledge in the last seven or eight years. They have taken in a head or two of horses, and often pick up one or two. Little bands will be out and pick up one or two horses. They are the Indians that live at the agencies and go out just on stealing parties.

By Mr. MERRICK:

Q. What agencies?—A. All the agencies—Spotted Tail, Red Cloud, Standing Rock.

Q. Government agencies?—A. Yes, sir.

Q. And go out and steal horses?—A. Yes, sir; they make a business of it.

By Mr. WILSON:

Q. Do you recollect whether the first mail that went out over that route was attacked by the Indians?—A. Yes, sir.

By Mr. MERRICK:

Q. Did those come from the agencies?—A. I could not say, but I presume they were all agency Indians.

Q. Agency Indians; friendly Indians?—A. I could not say; they call them friendly Indians.

By Mr. WILSON:

Q. They shot the lock off the mail pouch that first trip, did they not?—A. Yes, sir.

Q. Was there any road across there when this route was first stocked?—A. A part of the way we went over Custer's trail; the balance of the way we made new road altogether.

Q. It was necessary to build branches through there, was it?—A. Yes, sir.

Q. Stations for the stock and men?—A. Yes, sir.

Q. Now, you have spoken about the number of horses that were used. How many of those horses were used in carrying in supplies?—A. To tell you the truth, there were no supplies carried in at the time I left.

Q. You were only there till October?—A. What they did after that I do not know.

Q. You do not know anything about the line after October?—A. No, sir.

Q. What time did you leave in October?—A. I do not know just about the time; about the middle, I think.

Q. After that you do not know anything about what was done?—A. No, sir.

Q. Have you ever been over the line since?—A. Not the whole length of it.

Q. I want to know, if you can tell me, how many of these men and how many of these horses were actually employed in carrying the mails and how many were used for other purposes?—A. I do not know as they were used for any other purpose except carrying the mails at the time I left. There might have been some of them that had got down thin that were not able to do anything. I don't think any of them were used for any other purpose but carrying the mail at that time.

Q. Was not this about the first thing that was done there; to start a team along this route with a load of men?—A. No, sir; I only had ten teams when I went out to build the ranch, and took grain men. I took ten teams loaded with supplies and grain and tools.

Q. That was for the purpose of constructing the road?—A. For constructing the road and the mail stock used out of the same grain.

Q. You took ten teams there for the purpose of opening up the road?—A. For hauling logs and building ranches and plowing and work of that kind.

Q. What did you do in the way of marking out the line of this road?—A. Put up some mounds.

Q. What kind of mounds did you build?—A. They were built out of sod.

Q. How far apart did you build them?—A. Where we put them on little knolls where they could be easily seen, we put them from one to another.

Q. About how far apart?—A. Some might have been ten rods and some a half a mile. If it was an elevated spot, where we could see it from a good distance, we would put them further apart. It would depend upon the lay of the country.

Q. Did you build those mounds all the way through?—A. We built them all the way from Powder River to Bismarck, I think. When we got to Powder River there was a pretty good trail from there to Fort Keogh.

Q. That was the Custer trail was it?—A. Fort Buford had been running that way for some time, and travel from up the Yellowstone.

Q. There had been a mail route over that part of the country?—A. This mail route going from Bismarck to Miles City intersected this route at Buford River.

Q. How far is it from Powder River to Keogh?—A. Thirty-seven or thirty-eight miles.

Q. When you left this route how many of these eighteen horses you bought at Saint Louis were alive?—A. The fourteen that were put on the Bismarck and Fort Keogh route were all alive.

Q. All living?—A. Yes, sir.

Q. And in good condition?—A. Some of them were getting pretty thin.

By the COURT:

Q. Is it a good grazing country through there for the support of horses?—A. Yes, sir; but when doing hard work stock must have grain.

By Mr. WILSON:

Q. How is it in the winter time?—A. If the snow is there it is impossible to do much carrying of mail or anything else.

Q. That is what you call blizzards?—A. Yes, sir.

Q. How were the winters of 1879-'80, and 1880-'81 up there?

Mr. BLISS. You had better locate him, had you not?

Mr. WILSON. I am talking about in that country there. He says he was over part of the road.

A. In 1878, coming '79—

Q. [Interposing.] I say 1879-'80. I have no objection to your giving 1878-'79, though.—A. I was not in that country; I was in the Black Hills in the winter of 1879 coming '80; it was a pretty bad winter there.

Q. Do you or do you not know that the winter of 1879-80 was one of the worst winters that was ever seen in that country?

Mr. MERRICK. He says he was not there and does not know.

The COURT. He says he was in the Black Hills.

By Mr. MERRICK:

Q. How far is the Black Hills from there?—A. About two hundred and twenty-five miles, I think.

Mr. WILSON. I think a blizzard could get from the Black Hills over to Fort Keogh.

The WITNESS. My impression is it was a pretty bad winter all over that country.

By Mr. WILSON:

Q. [Resuming.] How was it in 1880-'81?—A. It was a bad winter in the country I was in, two hundred miles from there.

Q. How much experience have you had in this matter of freighting or carrying the mails up in that region of country?—A. In carrying the mail I have had but very little; in freighting I have had considerable.

Mr. BLISS. Your honor, my attention has just been called to the fact that in the printed record Exhibit "10 O" is dated February 12th, 1878. It should be February 12th, 1879.

Mr. MERRICK. It is at page 1203, Exhibit "10 O."

The COURT. Gentlemen on the other side can take notice of that. It should be 1879, instead of 1878.

By Mr. WILSON:

Q. [Resuming.] The headquarters for that division of the Army out there was at Saint Paul, I believe?—A. The general headquarters; yes, sir.

Q. Now, when Mr. Dorsey was out there, at the time that you have been talking about, I wish you would state whether it was then in contemplation to start a line of stages from Bismarck across to Keogh and Miles City, to carry passengers and express both?—A. I think I heard talk of that.

Q. Was not that a matter that was talked about between you and Mr. Dorsey at the same time these other things were talked about?—A. He might have spoken about putting on the coaches.

Q. That was a part of the scheme that was under discussion at the time you had this talk, was it not?—A. I do not think he ever mentioned that in regard to putting up the ranches.

Q. I am not talking about putting up ranches. I am talking about the stock that was purchased.—A. No, sir; not the stock that he purchased to carry the mail on time then.

Q. I want to know if at the time that you were talking of this increase of service and the purchase of stock, the matter was discussed of putting on a line of stages to carry passengers and express?—A. I think he said something about putting on coaches; I do not know just what.

Q. This conversation between you and him occurred four years ago, did it not?—A. Yes, sir.

By Mr. McSWEENEY:

Q. In speaking of Dorsey as having conversations with you, you refer always to John W. Dorsey, do you?—A. Yes, sir.

Q. About what time did he first see you in 1878?—A. In May.

Q. Where?—A. At Bismarck.

Q. Then did he leave you there after being with you a while and go up the Missouri River to Buford—up the Yellowstone and go around Fort Keogh; do you know that?—A. Yes, sir; I remember that.

Q. Now, that brought him to the residence of General Miles, Fort Keogh, did it not?—A. Yes, sir.

Q. Now, whilst he was there, having performed that journey, what were you doing with reference to this route, or as the result of conversation between you and him; that is, I mean did you go along and establish stations? That brings me right to the point.—A. Yes, sir.

Q. How far apart?—A. Going through the first time, going west—

Q. [Interposing.] Now, he had left you and gone around here [indicating on map], and you started there some stations; about how far apart?—A. The first station that was built—

Q. [Interposing.] I am not particular; just generally. Fifteen or twenty miles, or thirty-five?—A. When I met Mr. Dorsey he was coming back—

Q. [Interposing.] No, no; I have not come to that. I am coming around by gradations, just exactly the way I want to travel, and we will meet you over here at Powder River in the sweet by and by. Just hold on a minute. Now, he had left you and gone around by Miles City. I want to know how far apart generally did you establish these stations before you met him, at a point before I resume you again?—A. I built two in one hundred and fifty miles.

Q. No more than that?—A. That is all I built.

Q. Was it before you saw him again after he left you?—A. Two or three weeks—two weeks I think.

Q. Then you meet him along down on the line of your work, as I understand him, and see if I am correct, at a place called Powder River?—A. No, sir.

Q. Where would you say it was?—A. I met him west of the Little Missouri.

Q. He says the Little Missouri; at the Little Missouri, was it?—A. West of the Little Missouri, some twenty miles.

Q. [Referring to sketch map.] How far would that be from Miles City; that first little stream that is marked there, the first one to the right or east of Miles, is what?

[The witness marked on the sketch map certain places, and spoke in an undertone to Mr. Bliss, who was standing by.]

Mr. BLISS. He locates the Little Missouri just where the figures three hundred and a half are, right in the county of Billings there. He locates on the map as the place where he met Mr. Dorsey the place under the second "i" in Billings.

Mr. McSWEENEY. Sort of south from Comba?

Mr. BLISS. Yes.

By Mr. McSWEENEY:

Q. [Resuming.] Is that where you met him?—A. Somewhere in that vicinity.

Q. Now, was it there that he had the first conversation with you? Did he go back with you—he corrects me. After meeting there, did you go back towards Miles City together? He would go back with you, and you be going forward on your trip. Did you go on with him?—A. When I met him there he had changed the course of the road.

Q. Sir.—A. When I met Mr. Dorsey west of the Little Missouri, about twenty miles, he told me he had changed the course of his road, that it being a bad line of country we would go further south.

Q. You had been up from that point that I have been referring to further north and pulled down there on to the present line, had you, at the point located at “D,” in Dakota. Is that correct?

[The witness again leaned down over the map and spoke in an undertone to Mr. Bliss.]

Mr. BLISS. He says the old line ran right across the upper corner of that D.

A. I should judge so, and I met him on the old line opposite. Then we pulled over on to what is now the main line.

Q. [Resuming.] How far did you come down then to go on to the present line in miles?

Mr. BLISS. Instead of coming down and going south, how far did you go north or south to get on to the changed line?

A. I should think we went fifteen miles.

Mr. BLISS. Which way?

The WITNESS. Went south.

By Mr. McSWÉENY:

Q. Now, then, let us resume our journey. Does he travel on towards the west?—A. We went on to the main line, and from there we traveled east to the Little Missouri River.

Q. What did you do?—A. I hunted a road from there through the bad lands.

Q. Which do you call, with reference to this little map, the Little Missouri? Right south of Comba? Is that the Little Missouri—what Mr. Bliss calls three hundred and one-half?—A. Yes, sir; right south of Comba.

Q. Now, you start out on the road three hundred and one-half. Now, tell me where you go, for you will see in a moment why I ask you?—A. We went back across the Little Missouri.

Q. In which direction?—A. I left Mr. Dorsey at the Little Missouri with two other men, and I and two or three men took saddle-horses and went through the bad lands.

Q. Mention the names of the gentlemen that were with him.—A. One of them was a man by the name of Whitney.

Q. Did you go right from Tongue River, he asks me to ask you?—A. No, sir.

Q. Well, have it your own way. What do you say?—A. I went back east of the Little Missouri, and was gone twenty-four hours, and found a road through and came back and reported to Mr. Dorsey. Then we went on where we had left our crew building a raft at Lake Station and joined my other men, and then we went west of Powder River.

Q. How far is Fort Keogh from Miles City?—A. About thirty-seven or thirty-eight miles.

Mr. MERRICK. Which is Powder River?

Mr. BLISS. He marks it on the map as the one running down east of the letter M.

Mr. MERRICK. On the corner of the letter M.

By Mr. MCSWEENEY:

Q. Now, right there Mr. Dorsey had been, as you say, clear around the Yellowstone and had visited Miles City. Now, he asks me to remind you and ask you this: At Powder River did you there have the first talk that occurred between you as to duplicating the station; you had been coming along, as described, building certain stations. Now, at that point was it that he first spoke to you about the duplication of the stations?—A. No, sir; it was not.

Q. And I will ask you further if he did not say to you that he had been round and had seen general Miles, and that the general had told him that the facilities for obtaining their mail must be increased, and that he felt confident of getting it three times a week, and then daily, and on the strength of that did not Mr. Dorsey say to you, "I am going on without seeing Miner or anybody else, from what I have heard, on the strength of my own judgment, and duplicate these stations." Did he talk to you about having talked with General Miles?—A. Yes, sir; I remember his saying that General Miles was very anxious for an increase of the service.

Q. And after this roundabout trip and meeting you there, is not that the way the conversation came up?—A. Not about the duplicate stations, because that was talked of before we ever left Bismarck; that the stations should be about seventeen miles apart.

Q. Did you take out doors and windows for just half of the stations?—A. I think I took out six half windows, if I remember right.

Q. Now, then to resume. He told you of General Miles's anxiety as to the increase of service on that route, did he not?—A. Yes, sir.

Q. What did he say General Miles said?—A. I don't know as he told me exactly what he said, but as near as I can remember he said that General Miles and all the officers at Fort Keogh were very anxious to have the mail increased, and that there would be no trouble in getting it.

Q. Did he say anything like this to you: That Miles said that the military necessities of that district, and the settlements along the Yellowstone and towards the tributaries, were increasing so rapidly as to require mail accommodations at least three times a week?—A. He might have.

Q. Did he say anything about Maginnis, the Delegate from Montana?—A. I do not remember.

Q. [Continuing.] Who said it ought to be reduced from ninety to sixty hours and ought to be daily?—A. He might have said so.

Q. Now, then, did he not say to you that, from information he had got, and from the talk of the officers, and the ideas he had got along there about the increase of that country, "without seeing any of my partners, Miner or Peck, I am going, authorized on the risk of what may happen in the future, to duplicate these stations?"—A. He said that in Bismarck.

Q. Did he say that there was anything corrupt or anything distinct from the growth of that country that was going to influence him?—A. I think he said he had a good deal of influence in Washington.

Q. He said he had influence in Washington?—A. I think he said so.

Q. Now, then, when he was talking about this increase he wished you to go in and take half of whatever was in it?—A. That was before he bought any stock. He did not want to put any money into the country, he said.

Q. You had stock?—A. I had mules and horses. He wanted me to

put on my stock and he would furnish the balance of the money and we would go in together.

Q. And you should get half?—A. Yes, sir.

Q. Did he say what would become of Brady's share?—A. He didn't say much about Brady, I think.

Q. But he said you should have half?—A. Yes, sir.

Q. Did it strike you that there was anything unnatural in that?—A. It struck me as a pretty hard bargain.

Q. And you did not step in?—A. No, sir.

Q. When you met him on this back trip did he have a good deal of conversation with you—I do not ask you to give the whole of it—about the officers he had met there and the representations they had made. Did he appear to be pretty full of the conversations that he had had with those gentlemen at Keogh?—A. I remember his speaking of them a good many times.

Q. Was that General Miles the gentleman who married Judge Sherman—he did not marry Judge Sherman, but the daughter of Judge Sherman, of Ohio?—A. I do not know who he married.

Q. Do you recollect of his saying that General Miles had interest with the Shermans here?—A. I do not.

Q. Do you recollect of him saying that he would write to the Shermans, because he was a relative of the family, not only to the Secretary but to the General, and had married the daughter of Judge Sherman; do you recollect that?—A. I do not.

Q. And do you recollect of him saying that General Miles said that he had a good deal of influence with old Judge Key; that they were both old line Democrats, thank the Lord?—A. I never heard of Judge Key before in my life that I know of.

Q. And what did you say when he spoke of this increase, and about what the military men had said to him?—A. I told him if there was any money in it he had better get it.

Q. What did you say; did you give your views of the filling up of the country?—A. I do not know that I did.

Q. Has it not grown beyond all your dreams and thoughts and expectations?—A. Three miles between Powder River and Bismarck—

Q. [Interposing.] I mean the country out there in general.

Mr. BLISS. Let him answer the question.

Mr. MCSWEENEY. He thought the petitions which spoke of the future were exaggerations.

Q. Has not the reality—

Mr. BLISS. [Interposing.] Your honor, he started in to answer a question of Judge McSweeney's, and I submit that he is entitled to answer it.

Mr. MCSWEENEY. Certainly.

A. Since the Northern Pacific Railroad track was laid the country has commenced settling very fast. But along a mail route the country settles up very slowly.

By Mr. MCSWEENEY:

Q. [Resuming.] Do you think Maginnis, which is a good name, would earnestly recommend sixty-five hours, and speak of the filling up of the country—

Mr. MERRICK. [Interposing.] I object.

The COURT. [To the witness.] You need not answer that question. [To counsel.] I do not want any opinion from the witness.

Mr. MCSWEENEY. I am willing to test it in any way.

Mr. MERRICK. Test it by the ways known to the law.

Mr. McSWEENY. Which are somewhat peculiar.

Mr. MERRICK. Not at all, for peculiar cases.

By Mr. McSWEENY :

Q. [Resuming.] How long did Mr. John W. Dorsey stay out there with you?—A. I was busy over in the Black Hills at that time, and I do not know what time Dorsey left, but I think it was in the spring or the last part of the winter. I do not know just how long he staid. When he got back to the Little Missouri again he left it, and I think went in from there.

Q. After he left there he came back to you. After being there with you, did you see him again in about two weeks?—A. Yes, sir.

Q. Did he there tell you "I have received a letter from Mr. Miner which forbids me going on with the building of these stations; he does not approve of it," or something of that kind, "and has stopped it." Do you recollect that?—A. No, sir; I know we built three or four stations right after it.

Q. Did he come back after about two months and meet you out about seventy miles from Bismarck at a place called Muddy Station? Answer that.—A. Yes, sir.

Q. Now, were you about to build another station there, and was it right there, between there and Bismarck?—A. We met Mr. Dorsey four miles west of Muddy Station, and we came back and located and built Muddy Station.

Q. Now, did he say anything to you there about stopping the building of further stations?—A. I do not think he did. We built two or three right after it.

Q. He asks me to ask you this question: Whether he told you there to desist from building any more; that he had written on to Mr. Miner, or something of that kind, and disapproval had come from Mr. Miner, and he requested him to stop. He asks me to ask you if he said anything of that kind. I know nothing about it except what he tells me.—A. I do not remember of his ever mentioning such a thing.

Q. And then, when did you see Mr. John W. Dorsey again after that time in 1878, if ever?—A. After he left Bismarck I did not see him again until I met him here in Washington.

Q. And you have given the whole of the conversation, and about all that occurred between you and him as near as you can recollect?—A. I have given all I can give at present.

Q. And you did not take that half interest or enter into any business relations with him?

The WITNESS. How is that?

Mr. McSWEENY. You did not take that half, nor go into partnership in any way with him?—A. No, sir.

Q. They stocked it themselves, did they?—A. Yes, sir.

REDIRECT EXAMINATION.

By Mr. BLISS :

Q. You were asked about the progress of the Northern Pacific Railroad. Have you had anything to do with that?—A. Yes, sir.

Q. What has been your connection with it?—A. Contractor.

Q. For doing what?—A. Constructing.

Q. How large a contract?—A. I have had an interest in the ties and timber up till last September for about two years.

Q. You employ a large number of men, do you?—A. Yes, sir. Seventy five and one hundred, and since December 5th, I have employed about two hundred.

Mr. MERRICK. Two hundred in your employ?

The WITNESS. Yes, sir; and they were at the time I left on the 1st of May.

By Mr. BLISS:

Q. [Resuming.] You were brought away by subpoena from your men?—A. Yes, sir.

Q. When Dorsey was at Bismarck was Rerdell there at the same time?—A. Yes, sir; he came there the 1st of July, I think.

Q. You had met Dorsey, as I understand it, before that, some time in May, and went to Saint Louis with him?—A. We left Bismarck, I think, the 1st or 2d of July, and I think when we came back from Saint Louis we met Rerdell.

Q. What were the settlements along that line in 1878 between Bismarck and Fort Keogh?—A. I don't think there was a single soul inhabited the country between Powder River and Bismarck, only as they passed Fort Lincoln. There might have been one or two ranches on Hart River; that is, before we put up the line.

Q. You say you have been over some portion of the line since?—A. Yes, sir; going for some of my timber. I had to go over part of that route to get into the pinery.

Q. What route?—A. I went almost to the Little Missouri River.

Q. From where?—A. From Bismarck.

Q. When was that?—A. My last trip was last September.

Q. You have been over it previous to that?—A. Yes, sir.

Q. Then the country filled up along the line?—A. Not along the line of the mail route until the track commenced to be laid and then the settlement commenced.

Q. How far was this road from the Northern Pacific Railroad?—A. It ran right along the road until you came out about a hundred miles and then it left and did not hit it again until you got to Powder River.

Q. In building your stations, &c., did you experience any trouble from the Indians?—A. No, sir.

Q. You said that the mails from Bismarck to get to Fort Keogh prior to this route had to go the roundabout road that you have described on the map?—A. To Fort Buford.

Q. Did that mail that was intended to go to Fort Keogh come from the east; did it need to go up by Bismarck; did not that go down?—A. No, sir; I think it would have to go by Bismarck.

Q. Going to Fort Keogh?—A. Going to Fort Keogh.

Q. At Fort Keogh there was, in 1878, a small settlement?—A. Yes, sir.

Q. Beyond that there was not any until you got over the mountains to Helena?—A. I do not think there were many. There might have been a few farms in the valley of the Yellowstone.

Q. You said something about a portion of this stock might have been placed on the Fort Buford route; where did that run?—A. From Buford to Fort Keogh.

Q. Buford is north of Fort Keogh?—A. Northeast.

Q. It is on that roundabout road?—A. Yes, sir.

Q. Now, who ran that route; who was the contractor on that route?—A. The same company that had the route from Bismarck to Fort Keogh.

Q. As I understand you, this conversation with reference to partnership, and with reference to increase to three trips a week, and a reduction of sixty-five hours or thereabouts, took place at Bismarck before Dorsey went to Fort Keogh?—A. Yes, sir; before he went anywhere.

Q. Before you went to Saint Louis?—A. Yes, sir; before he bought the stock.

Q. How long after he got there was it?—A. I could not say exactly; probably a few days.

Q. And the conversation as to doubling the stations, providing for the stations being from seven to fifteen miles apart, did that take place before or after Dorsey went to Fort Keogh?—A. Before he went to Fort Keogh.

Q. You said that you never heard of Judge Key before?—A. Yes, sir; unless it was Postmaster Key; I have heard of him, if that is the man they have reference to.

Q. You also said that he did not say much about Brady; did he say anything about him?—A. No, sir.

Mr. WILSON. He did not say that he did not say much about Brady.

Mr. BLISS. Yes, he did.

Mr. WILSON. Well, the record will show.

By Mr. BLISS:

Q. [Resuming.] How far is Muddy from Fort Bismarck?—A. I think it is may be fifty miles, may be fifty-five miles.

Q. You mentioned that you built some stations after meeting Dorsey on the Little Missouri there; did you build any stations in violation of his direction?—A. No, sir.

Q. Did you build any other stations than those which were originally arranged to be built?—A. No, sir.

Q. Where was that arrangement made about the number of stations to be built?—A. It was made in Bismarck.

Q. Before Dorsey went to Fort Keogh?—A. Yes, sir.

By Mr. DICKSON: [The foreman.]

Q. You stated in your testimony that you saw Rerdell at Bismarck concerning the petitions that he had circulated on the route. Did any of your men sign those petitions?—A. I do not think that Rerdell ever drew up a petition; at least I never saw it. It was only talked of.

Q. You stated that he referred to the signatures of the men in your employ?—A. Yes, sir. It never was brought to us for signature.

By Mr. BLISS:

Q. That petition related to the idea of a petition for a suppositious settlement?—A. Yes; the petition that I have reference to.

Mr. WILSON. He did not say anything of the kind.

Mr. BLISS. He said distinctly that the proposition was when they got about one hundred and seventy miles from Bismarck, they were to get his crew to sign a petition representing that they lived at some settlement north of the line, and that they desired a postal service up to that route, and that the ranchman nearest to that place where this alleged settlement was to be located was to be made the postmaster. He said that if he said anything.

By Mr. DICKSON: [The foreman.]

Q. It was the petition about a settlement one hundred and seventy-five miles west of Bismarck?—A. Yes, sir; that is the one.

By Mr. BLISS :

Q. Did I state that correctly ?—A. Yes, sir ; if I remember what I said ; I said that Mr. Rerdell spoke to me about drawing up a petition making an elbow in the road one hundred and seventy-five miles west of Bismarck, or a more convenient point west of the Little Missouri River, of the road which ran north ; then back on the main line ; then to Fort Keogh, making an additional distance of some sixty or seventy miles.

By Mr. MERRICK :

Q. What was to be at the other end of the road ?—A. A settlement. I do not know the name of it.

Q. Of your men ?—A. Our men were to sign the petition——

Q. [Interposing.] As settlers at the other end of that route ?—A. As if they were settlers there at that time.

By Mr. BLISS :

Q. There was no settlement at the place referred to ?—A. No, sir.

Q. That was rather a matter for settlement with the Treasury than settlement out there, was it not ?

Mr. WILSON. Well, now.

The COURT. [Facetiously.] That is a suppositious settlement.

By Mr. WILSON :

Q. And no petition was gotten up, was it ?—A. No, sir ; I never saw one.

Q. Did you measure the line of the Northern Pacific between Keogh and Bismarck ?—A. No, sir.

Q. Did you measure the mail line ?—A. I measured the most of it.

Q. How far did you make it ?—A. Something over three hundred miles.

Q. It was advertised for two hundred and fifty.

COLL. MCLELLAN sworn and examined.

By Mr. BLISS :

Question. Where do you live ?—Answer. I live at Glendale, Montana.

Q. How long have you lived in Montana ?—A. I have been there about five years in that country.

Q. Do you know Mr. Joseph Pennell, the last witness ?—A. Yes, sir.

Q. Had you in 1878 anything to do with the mail route 35051, from Bismarck to Tongue River ?—A. Yes, sir.

Q. What ?—A. I was employed by Mr. Pennell to go out and help build ranches, &c., on the line, and help locate the line.

Q. When did you start ?—A. Some time in July ; I do not remember the exact date.

Q. And how far did you go with the party ?—A. I went as far as O'Fallon's Creek.

Q. How far is that from Bismarck ?—A. Two hundred and some odd miles.

Q. How far is it from Tongue River or Fort Keogh ?—A. I think about seventy-five miles.

Q. How many stations were built on that distance to O'Fallon's Creek ?—A. Well, I only helped build five or six, I think it was, but there were more built afterwards.

Q. When you got to O'Fallon's Creek what did you do ?—A. I stopped there to keep a ranch.

Q. What month was that?—A. I think it was in August—the last of August.

Q. How long did you stay there?—A. I staid until February, 1879.

Q. What, then, did you do?—A. I quit and went into Bismarck.

Q. During the fall of 1878 how many trips a week was the mail carried over this route?—A. One trip?

Q. At that time do you know how many drivers there were?—A. I think it was three.

Q. How was the service performed, horseback, buckboard, or how?—A. It was performed with buckboards nearly all the time; it was carried a few times on horseback.

Q. Did the buckboards have one horse or two?—A. Two.

Q. How many horses were kept at your station?—A. Well, I had four there most of the time at nights; generally two extra horses.

Q. Do you mean six in all or four in all?—A. Four in all. It was very uncertain about the number. Sometimes I had ten or twelve.

Q. How many stations were there between O'Fallon and Fort Keogh?—A. Three, I believe,

Q. You said some additional stations were built. Do you know how many?—A. Well, I think there were thirteen stations in all between Bismarck and Fort Keogh.

Q. Does that include Fort Keogh and Bismarck or the thirteen between?—A. The thirteen between.

Q. Did the drivers stop over night at your station?—A. Yes, sir.

Q. Did the drivers that came from Fort Keogh go on beyond your station, or did they return to Fort Keogh?—A. They generally returned. They went through in the commencement, and then they made some other arrangement, and the drivers from Tongue River or Keogh came as far as my place and returned.

Q. When you say "went through," you mean each driver went over the whole route?—A. Yes, sir.

Q. And afterward they changed and came from Fort Keogh and returned?—A. Yes, sir.

Q. Do you remember that at any time the service was increased to more than one trip a week?—A. I remember hearing the drivers telling about an increase to three trips a week.

Q. You saw the drivers going by your station, did you not?—A. Yes, sir.

Q. Was this number of horses that you speak of increased at any time?

The WITNESS. The number used on the line?

Mr. BLISS. Yes.

A. It was increased in February, I believe.

Q. February of what year?—A. Eighteen hundred and seventy-nine.

Q. Up to that time it had not been increased; is that what you mean?—A. Well, they had been increasing from the time they started, more or less. They started out, I think, with thirteen head of horses to carry the mail, and shortly afterwards Mr. Pennell began to buy, and bought five head at one time I believe.

Q. Do you know how many there were before this increase that you spoke of in February, 1879?—A. I do not know exactly how many.

Q. Do you know how many men were employed?—A. I think about fifteen or sixteen.

Q. How many of those were drivers?—A. Well, part of the time there might have been four or five drivers, but I think generally there

was only about three or four. I have no means of knowing how many drivers there were.

By the COURT:

Q. That was when the route was run once a week?—A. In the fall and winter they increased the number of drivers. I think there were two used on one trip a week.

By Mr. BLISS:

Q. When they increased to three trips, how many drivers were used?—A. Well, I do not know how many drivers were used then.

Q. After the commencement in January, 1879, was there then in that month any increase of horses?—A. Not that I know of.

Q. But in February there was?—A. Yes, sir.

Q. How much increase in February?—A. I think it was seventeen head of mules.

Q. After that time, was there any increase down to the time you left the road?—A. No, sir.

CROSS-EXAMINATION.

By Mr. HINE:

Q. You went on the road at what time?—A. Some time in the first part of July, 1878.

Q. Did you at once go to building stations?—A. Yes, sir.

Q. Do you recollect who were with you?—A. Mr. Pennell was our foreman.

Q. Who else was with you?—A. I don't remember the names of all of them. There was a good many.

Q. Are any of them here?—A. I don't think there are.

Q. Are any of the drivers here?—A. Yes, sir.

Q. They were not engaged with you in building stations?—A. Part of the time; one man is here that was.

Q. How long were you engaged personally in building stations?—A. It was some time in August when I stopped at O'Fallon's Creek; I don't know what time.

Q. You were nearly a month, then, in building stations, were you?—A. I think so; and in getting out that far.

Q. And then you went upon a ranch?—A. Yes, sir.

Q. And staid there until February, 1879?—A. Yes, sir.

Q. Did you carry mail over this route?—A. No, sir.

Q. Did you ever travel over the whole line of the route?—A. Well, there is about twenty miles that I never traveled.

Q. What portion is that?—A. From O'Fallon's Creek to Powder River. I should think it was forty miles.

Q. Did you ever travel from there to Keogh on the mail line?—A. Yes, sir.

Q. While the mail was running?—A. Yes, sir.

Q. When?—A. I think it was in 1880.

Q. Did you have any business at all in connection with carrying the mail?—A. No, sir.

Q. Have you any personal knowledge of what was on the route except what stopped at your station?—A. Only what stock we took out with us, and what other stock I seen on the line afterward.

Q. So all you know is what stock you actually saw on the line?—A. That is all.

Q. Did you see any stock at all, or were you in a position to see any stock at all except what you passed, and what stock happened to stop at your one station?—A. Yes, sir; I seen other stock besides that.

Q. Do you know anything about the number of men and animals they had upon the line of that road excepting what there was at the time it was first started, and what stopped at your station? If you do, then tell us what you know about it.—A. Well, I know the stock that we started out with from their appearance, and the stock that was bought afterwards, of course I could tell the difference, and I know they were used in carrying the mail because they came by my ranch.

Q. The animals that started out from Fort Keogh did not come down to your station, did they?—A. I think they did. They changed round a good deal.

Q. Your station was how far from Bismarck?—A. About two hundred and forty miles.

Q. Did the same animals that started out at Bismarck come to your station regularly?—A. Not regularly; no, sir.

Q. Did they come there at all?—A. Yes, sir.

Q. Were there not eight or ten stations between Bismarck and your station?—A. Yes, sir; there were.

Q. And did they not change animals at each one of those stations?—A. I believe they did, usually.

Q. Was there ever a horse from the time you went upon your ranch until you quit that was started at Bismarck and driven through to your station?—A. Yes, sir.

Q. How frequently?—A. Well, I do not know of but one instance, and I don't know that only from what the drivers and passengers told me.

Q. Was there ever a horse that was started out from Keogh and driven through to your station?—A. Yes, sir.

Q. How often?—A. Very often.

Q. How many miles is that?—A. About seventy miles I think.

Q. You left there you say in February?—A. Or March; about the 1st of March, I think it was, or the last of February; along there.

Q. And you think that only a few horses were brought in there from the time you started your ranch until you left; five or six, I think you said.—A. I think there was five brought at one time.

Q. Do you know when the increased number of trips was put upon the line?—A. I believe it was the 1st of January, 1879.

Q. Do you know at one time of a drove of thirty or forty horses being taken in there?—A. I do not.

Q. You do not?—A. No, sir.

Q. When you went east after quitting, did you not meet a man going in there with a drove of thirty or forty horses for this route—or mules?—A. That was the time that the mules were put on it that I spoke of before. I think it was seventeen or eighteen. My recollection is it was one car load of mules.

Q. You say there was only seventeen or eighteen?—A. That is my recollection.

Q. Was there not between thirty and forty head?—A. I don't think there was; I don't know.

Q. Did you count them?—A. I don't think I counted them.

Q. Who was with them?—A. I met Mr. Williamson about that time; I think he had been in charge.

Q. What Mr. Williamson was that?—A. The gentleman sitting there. [Indicating Mr. L. P. Williamson.]

Q. That was the first time you ever saw him ?—A. Yes, sir.

Q. You were leaving the route at that time ?—A. Yes, sir.

Q. You were under pay, were you not, at the time you were keeping the ranch ?—A. Yes, sir.

Q. How much a month ?—A. I believe they allowed me \$25 a month.

Q. You kept the horses for Mr. Dorsey, or Dorsey & Co., whoever it was ?—A. Yes, sir.

Q. And they furnished the feed ?—A. No ; part of the time they did not.

Q. Who did furnish it ?—A. I furnished the feed.

Q. Did you charge it to them ?—A. I did, but they didn't pay it.

Q. What feed did you furnish ?—A. Hay.

Q. Anything else ?—A. No.

Q. Who furnished the grain ?—A. I don't know. They did when there was any.

Q. You say you furnished hay. Where did you cut the hay ?—A. On the prairies there.

Q. Right there by the ranch ?—A. No ; a few miles off.

Q. Were you under pay by Mr. Dorsey at the time when you cut the hay ?—A. I didn't cut the hay myself ; I hired it done.

Q. Did you use Dorsey's stock ?—A. No, sir.

Q. Whose stock did you use ?—A. Hired stock.

Q. Did you have any stock at your ranch, excepting what Mr. Dorsey had furnished ?—A. Yes, sir.

Q. How many ?—A. Two head ; when they were putting up the hay, I mean. I had one pony of my own running around there. I did not use him any.

Q. Did you use any stock in putting up hay of your own ?—A. No, sir.

Q. Then, you did use Mr. Dorsey's stock in putting up that hay ?—A. I did not.

Q. Whose stock did you use ?—A. Hired stock.

Q. From whom ?—A. Ed. Townsend.

Q. Where he did he live ?—A. Powder River.

Q. How far off ?—A. About forty miles.

Q. How long did you have the animals from Mr. Townsend ?—A. I don't remember now how long it was.

Q. Did you have any from him at all ?—A. I said I did.

Q. How long did you have them ?—A. I don't remember the number of days.

Q. How long had Mr. Townsend resided at Powder River ?—A. Three or four years, I believe.

Q. Had he a station there ?—A. Yes, sir.

Q. What was he doing there ?—A. He was keeping the station.

Q. And had been for three or four years before ?—A. No ; three or four years altogether now.

Q. Who was he keeping the station for ?—A. For himself, as I understood it.

Q. Was it on the line of this mail route ?—A. Yes, sir.

Q. Did he keep the station that was used by this route ?—A. Yes, sir.

Q. He was keeping it for himself and not for Mr. Dorsey, was he ?—A. That is the way I understood he was running it.

Q. Was he in the employment of Mr. Dorsey ?—A. I believe not.

Q. But the station kept by Mr. Townsend was the station that was used by Mr. Dorsey on this mail route ?—A. The way I understood it

Mr. Dorsey paid Mr. Townsend so much for boarding his men and furnishing hay for the stock.

Q. Did Mr. Townsend have any horses at all, excepting the horses that Mr. Dorsey had there?—A. He had.

Q. What was he doing besides keeping that station?—A. I don't know what he was doing all the time.

Q. Did he have any other business?—A. He had a partner, I believe, and they had a team and they did other work.

Q. What other work was there to be done in that region of country?—A. Oh, there is a great deal of freighting in summer time, and there is a great deal of work putting up hay for the Fort Keogh post.

Q. When you met Mr. Williamson there, there was some dispute about that hay, was there not?

The COURT. Mr. Hine, I am unable to imagine what the object of this can be.

Mr. HINE. I think I can show your honor in a half a minute. I never understood yet that we have not a right to cross-examine a witness to show animus. The question I have asked him is, whether he had any dispute or difficulty with Mr. Williamson. He says Mr. Williamson came there representing this company. I desire to show that he and Williamson got into a dispute in order to show his animus. If I cannot do that, I have misconceived my right.

The COURT. Undoubtedly you have a right to show animus; but you have been running all over the country in this matter, and really, the man has shown no animus in his examination-in-chief.

Mr. HINE. The question asked is whether he and Mr. Williamson, who at one time represented the company, had any trouble.

The COURT. He has shown no animus in his examination-in-chief, so far as I remember. I must really stop it.

Mr. BLISS. What is the question.

The stenographer read the question as follows:

Q. When you met Mr. Williamson there there was some dispute about that hay, was there not?

The COURT. I have allowed it to go on certainly to a reasonable length. The man's testimony-in-chief was not very important, and he showed no animus against anybody. You examined him about cutting hay, and whose horses and mules were used and all that. Time is really too valuable to be spent further in this manner.

Mr. HINE. It is not presumed that the court knows anything about what the facts are. I do know something about the facts in this case, and I am examining in reference to these facts for the purpose of showing that he was using in gathering this hay the teams of Mr. Dorsey, and that he required pay for that hay and was paid for all that was used; but when he claimed pay for what was cut on the prairie some distance off there was a dispute between the parties that went so far that they threatened to kill each other, and using a bayonet to each other at the bank where the money was paid. If I cannot develop these facts in cross-examining the witness, then of course I have mistaken my right.

The COURT. All cross-examination excepting what relates to the subject of the examination-in-chief is under the control of the court. The court, of course, allows cross-examination for the purpose of testing the honesty of the witness, his memory, and his fairness of mind; but whenever the time seems to be taken up in an examination of that kind beyond what is necessary it is the duty of the court to interfere. In this case we want to save as much time as we can, and I do not want

this collateral cross-examination to go beyond what is necessary merely to show the animus of the witness; and as it was a quarrel between him and Williamson I do not see that it has any bearing here.

Mr. HINE. Of course, I insist upon the question because I believe I am doing what I have a right to do.

The COURT. The court will overrule your question then.

Mr. HINE. It is just as well. Of course, I take the exception. Time is as valuable to us as it is to the court. We do not take any more time than we think important.

The COURT. The court differs sometimes from counsel, of course. If counsel are allowed to have their own way in examining and cross-examining and arguing I do not see when the case will end.

Mr. BLISS. Your honor, another error in the printed record has just come to my notice. Exhibit 14 N, which is on page 1199, is made to read "three men and twelve animals" on the present schedule. In the original it is three men and three animals.

Mr. TOTTEN. What route is that?

Mr. BLISS. Vermillion to Sioux Falls.

Mr. MCSWEENEY. If the court please, as they call official or judicial notice to corrections of the record, allow me to ask the practice, are the jury permitted to have the benefit of this printed record from day to day?

The COURT. No, sir; the jury are supposed to be so much superior to the rest of us that they will remember it all.

Mr. MCSWEENEY. As they call attention to it in open court, I did not know what the practice was.

Mr. MERRICK. I called attention to it the other day for the purpose of notifying all the counsel. I wish you would call attention to any error that you see.

HOWARD T. LAMBERT sworn and examined.

By Mr. BLISS:

Question. Where do you reside?—Answer. Stillwater, Montana.

Q. How long have you resided there?—A. Three or four years.

Q. Have you ever had anything to do with the mail service on the mail route from Bismarck to Fort Keogh?—A. Yes, sir.

Q. What?—A. Driver.

Q. When did you commence service?—A. The 3d day of January, 1879.

Q. How long did you continue in the service?—A. Until about the middle of May, 1879.

Q. Where did you start from on the 3d of January, 1879?—A. Miles City or Keogh; I went to Keogh and then back to Miles City.

Q. Where did you go to?—A. Bismarck.

Q. All the way through?—A. Yes, sir.

Q. What time did you arrive in Bismarck?—A. I think the 11th of January.

Q. And you started on the third?—A. Yes, sir.

Q. What time of day did you start?—A. I left Miles City about 8 o'clock in the morning.

Q. What time did you get to Bismarck?—A. About three in the afternoon.

Q. How did you go?—A. Horseback all the way.

Q. Did you take any mail?—A. Yes, sir.

Q. How much of a mail?—A. A small sack, I should judge, with, may be, a hundred letters in it.

Q. Where did you ride on the first day?—A. Powder River.

Q. How far is that?—A. About thirty-six or thirty-seven miles from Keogh.

Q. Did you stay there over night?—A. Yes, sir.

Q. Where did go to the next day?—A. O'Fallon Creek.

Q. Did you have the same horse or a new horse from Powder River to O'Fallon Creek?—A. I changed horses at Powder River.

Q. From Powder River you went to O'Fallon. Did you stop there over night?—A. Yes, sir.

Q. Did you change horses there?—A. Yes, sir.

Q. From there where did you go?—A. To Bracket's ranch.

Q. What distance is that?—A. It is about forty miles, I think, from Powder to Bracket.

Q. Did you change horses there?—A. I did.

Q. Did you stay over night?—A. Yes, sir.

Q. And you went on the next day to where?—A. Little Missouri.

Q. How far was that?—A. Twenty-two or twenty-three miles.

Q. Did you stay there over night?—A. I did; yes, sir.

Q. Did you go on the next day?—A. I went on the next day.

Q. With the same or a different horse?—A. The same horse. There was two horses there, I believe. but they were both crippled, and I did not like to take them to ride on.

Q. And you went on to where?—A. I went to Sweet's Station; I think they call it Antelope.

Q. How far is that?—A. About thirty-eight or forty miles.

Q. Did you stay there over night?—A. Yes, sir.

Q. Where did you go from there?—A. To Green River.

Q. Did you stay there over night?—A. Yes, sir.

Q. Did you take a new horse at Antelope?—A. No, sir; there was none there. Everybody had left the station. Sweet had left there.

Q. So you went on with the same horse?—A. The same horse; I met a driver there with two horses.

Q. At Antelope?—A. At Antelope. He was going west and I was going east.

Q. You did not get his horses?—A. Certainly not; he had two passengers.

Q. Where did you go from Antelope?—A. To Green River.

Q. Where did you go from Green River?—A. To Slater's.

Q. Did you stay there over night?—A. Yes, sir.

Q. Did you change horses?—A. No, I think not. I think I rode the same horse. I will not be positive about that.

Q. Where to?—A. To Coal Bank.

Q. Did you stay there over night?—A. Yes, sir; I staid over night and took a fresh horse from there in the morning.

Q. And went to where?—A. To Bismarck.

Q. How far is it from Coal Bank to Bismarck?—A. About thirty-two or thirty-three miles.

Q. At that time going over the route how many horses were there on the route?—A. I think about twenty-two in service at that time. There was a pair of small mules on the road that I forgot in my affidavit to say anything about, and there was some crippled horses.

Q. Did you return from Bismarck to Miles City?—A. Yes, sir.

Q. When?—A. I got into Bismarck Sunday, and I think it was Wednesday that I started out on the return trip.

Q. How many days were you in going back to Miles City?—A. I think it took me about eleven or twelve days to get back.

Q. Did you take any mail?—A. Yes, sir; I took a good sized mail.

Q. What do you mean by a good sized mail?—A. I took a large sack pretty well filled.

Q. Did you go horseback?—A. No, sir; I started out with a sleigh; a pung, I believe they called it.

Q. Did you carry that all the way through?—A. Through to the Little Missouri.

Q. And then what from there on?—A. A Chinook winter came, and there was no snow, and I borrowed a wagon; a lumber wagon with a couple of boards on it.

Q. In going back did you use more or less horses than you used before?—A. I used more going back; that is, I doubled up from Little Missouri and took two horses.

Q. Had there been more horses placed on the route, or did you use more of those that were there?—A. I used more of those that were there.

Q. Did you go over the route again?—A. Yes, sir.

Q. When was that?—A. I went right into Keogh, and started over the route; the same trip right over again.

Q. How long did you keep the zigzagging up?—A. Until along in February some time.

Q. Some time in February were extra horses put on?—A. Yes, sir.

Q. How many?—A. There was two bought in Milestown, and Mr. Dorsey bought two that I know of in Bismarck.

Q. How many more?—A. Then Mr. Williamson brought up, I think, twenty-one or twenty-two head of mules, and there was an additional team bought in Bismarck.

Q. Up to that time had the stock been increased from the time you first commenced on the route?

The WITNESS. Up to what time?

Mr. BLISS. Up to the time that these purchases that you spoke of were made in February.

A. Only what I have stated; that is, two small horses were bought, as I understand, by Mr. Savage, agent for the company.

Q. That was when you first started?—A. I went and got the horses and bought them through him, to start out with.

Q. After that time down to the time when Mr. Williamson came on with these twenty-one or twenty-two head that you spoke of, was there any increase in the stock?—A. Only the two that Mr. Dorsey bought at Bismarck; he bought a pair of horses there and sent them out over the road.

Q. While you were running there were the trips once a week or three times a week, or what?—A. Three times a week; that was supposed to be the number of trips; I started out on the second tri-weekly trip from Miles City on the 3d of January.

Q. How long did you say you staid?—A. From January up to the middle of May; I don't remember the day I left; somewhere along from the 15th to the 20th.

Q. How came you to leave?—A. I got tired.

Q. During the time you were there did you run nights?—A. Yes, sir.

Q. When did they commence to run nights?—A. Somewhere along about the 1st of May, I think; I was on a night drive myself.

Q. Up to the time they ran nights, was the time reduced to sixty-five hours?—A. That is something I never knew anything about—the

time. All we were told was to get through as quick as we could up to the time Mr. Williamson came there and arranged the road and got it in shape.

Q. Did you ever go through in sixty-five hours?—A. I never did; no.

Q. How many places were there at which you laid over nights up to, say the 1st of April, 1879; you said they commenced running nights, I think, in May?—A. I think it was along the 1st of May they commenced running nights.

Q. Prior to that time how many places were there at which they laid over at night?—A. I think the first drive out of Bismarck was to Muddy.

Q. That is one, then?—A. I don't know whether it was Muddy or Springs. At any rate the second night was at Green River.

Q. That makes two nights?—A. Beaver was the next.

Q. That is three.—A. Pennell was the next.

Q. That is four.—A. Powder River was the next.

Q. That is five.—A. And then Keogh.

Q. When they commenced running nights, did they run nights over the whole length of the route?—A. All over where I was acquainted. I don't know whether they did east of me or not. They ran into me in the evening at Pennell station, and I drove from there to Powder River in the night.

Q. You were not acquainted at Beaver station?—A. No, sir; I was not there after I commenced running on that time.

Q. When they commenced running nights, how was the mail carried?—A. It was carried with a two horse buckboard—a common buckboard, and then a Grimes wagon. That was a heavier buckboard, known as the Grimes wagon.

Q. At that time was the country settled up along the road?—A. No, sir; there was no settlement there as I know of.

Q. Were there any post-offices along the route?—A. None that I know of.

Q. No post-offices between Bismarck and Fort Keogh?—A. I don't know whether they stopped at Lincoln or not; there is a post-office there, I believe.

Q. What was Lincoln?—A. Fort Lincoln, four or five miles from Bismarck.

CROSS-EXAMINATION.

By Mr. HINE:

Q. How many round trips did you make from Bismarck to Fort Keogh?—A. Two.

Q. You made those early in January?—A. I made those early in January.

Q. After that you made your trips between stations?—A. Between stations. My route was from Pennell station to Powder River.

Q. You have been here how long?

The WITNESS. In Washington?

Mr. HINE. Yes.

A. Something over seven weeks.

Q. On this case?—A. Yes, sir; I was subpoenaed here as a witness on this case.

Q. You know nothing about it, then, I suppose, except between the stations where you ran—you have no personal knowledge of it?—A. No, sir; not after I made those trips.

Q. Nor as to the time either, I presume ?—A. No, sir; I never knew what the time was.

Mr. HINE. That is all.

By Mr. BLISS.

Q. You say you went from Pennell Station to Powder River; how far is that ?—A. Sixty-three miles we always called it there.

Q. You knew what horses you used there, then ?—A. Yes, sir.

Q. You connected at Pennell Station with a driver coming from the other way, did you not ?—A. Yes, sir.

Q. Do you know how long his route was from where he came from ?—A. He ran from there to Beaver, I think, which was fifty-five or fifty-eight miles; along there somewhere.

Q. You saw the horses that he used ?—A. Yes, sir; those that he drove in there.

By Mr. WILSON:

Q. Do you remember when the railroad was finished to Glendive ?—A. I couldn't say. I live three or four hundred miles west of there now.

At this point (12 o'clock and 35 minutes p. m.) the court took its usual recess.

AFTER RECESS.

WILBUR A. BURNS sworn and examined.

By Mr. BLISS:

Question. Where do you live ?—Answer. I live now at Wicks, Jefferson County, Montana.

Q. Did you ever have anything to do with the mail route between Bismarck and Miles City ?—A. Yes, sir.

Q. When ?—A. The 1st day of January, 1879.

Q. What did you do then ?—A. I started out to carry the mail to Bismarck.

Q. Where did you go to ?—A. I went to Bismarck.

Q. How long were you in getting to Bismarck ?—A. I think, to the best of my recollection, I was nine days the first trip.

Q. Did you ride nights ?—A. No, sir.

Q. How did you go, horseback or with a buckboard, or how ?—A. I went horseback, sir, until pretty near Bismarck.

Q. How many horses did you use on that trip ?—A. I think I used four on the trip through.

Q. Do you know how many horses there were on the route at that time ?—A. I found eighteen serviceable horses and four unserviceable.

Q. After that time were there any horses added ?—A. Yes, sir.

Q. How soon ?—A. Well, there was horses added the next day on both ends of the line.

Q. How many ?—A. I do not know.

Q. Do you know whether one or twenty ?—A. Well, there was two that I know of on each end.

Q. When did you leave ?—A. The first day of January, 1879.

Q. How long did you remain in the service ?—A. I was discharged about the 1st day of April.

By Mr. TOTTEN:

Q. What year ?—A. The same year.

By Mr. BLISS :

Q. Eighteen hundred and seventy-nine?—A. Eighteen hundred and seventy-nine.

Q. During that time, from January to April, were you running over the route all the time?—A. No, sir; I only made three trips to Bismarck.

Q. What other trips did you make?—A. The latter part of the time I was driving from Powder River to Miles City.

Q. The first trip was made, you say, the first of January?—A. Yes, sir.

Q. How long after that were the others made?—A. I made my return trip and I kept on going. As soon as I got to one end I went to the other.

Q. Then the three trips were made in the month of January, or early in February?—A. Early in January or in the month of February.

Q. After that you ran where?—A. From Powder River to Miles City.

Q. In those three trips that you made over the whole length of the route, how much time did you take for each trip; I suppose it varied somewhat?—A. On an average, about eight days.

Q. What was the shortest time?—A. The shortest time was six days.

Q. When you commenced driving from Powder River, how far did you drive?—A. I don't know exactly the distance, but I think it was about thirty-five miles.

Q. Where to?—A. To Fort Keogh and Miles City; it is the same thing nearly.

Q. Do you remember how many drivers there were on the road at the time you were going through?—A. Yes, sir.

Q. How many?—A. There was eight.

Q. When you were driving from Miles City to Fort Keogh, how many horses did you use?—A. I used four.

Q. Was that all there were on that end of the line?—That is all that I know of.

Q. Another driver went from Powder River east?—A. Yes, sir; from Powder River, east.

Q. Who was it?—A. Sometimes it was Lambert, and at other times it was a man by the name of—I cannot think of his name now.

Mr. BLISS. No matter. That is all.

CROSS-EXAMINATION.

By Mr. HINE :

Q. You made three through trips, you say?—A. Yes, sir.

Q. Was that at the same time that Mr. Lambert went through?—A. Yes, sir; I started out first ahead of Mr. Lambert from Miles City.

By Mr. BLISS :

Q. At that time, January, February, and March, 1879, how many trips were made a week?—A. We started out when it was increased to three times a week.

By Mr. HINE :

Q. Your three through trips were made earlier then, probably?—A. I don't recollect exactly what time they were made.

Q. What kind of winters do you have up there?—A. That winter it was pretty hard.

Q. Pretty heavy roads and deep snow?—A. Yes, sir.

Q. And about how many rivers did you have to cross?—A. Well, Tongue River, Powder River, Little Missouri, Green River, and Hart River.

Q. Keep on.—A. I can't think of the names.

Q. There are a few more, are there not?—A. I don't know whether there are or not. There is O'Fallon Creek, I believe. I think there are some more.

Q. In the winter season could those rivers be forded?—A. They could; in the winter they could go over on the ice.

Q. You crossed O'Fallon Creek and Green River twice each, did you not?—A. Not O'Fallonr Ceek.

Q. You crossed Green River twice?—A. No, sir.

Q. You crossed Hart River twice?—A. I can't say for sure about that; I think we did, though.

Q. What other rivers did you cross twice?

The WITNESS. Going on one trip?

Mr. HINE. Either trip either way.

A. I don't know of any others.

Q. The ice did not afford you a crossing place all the time during the winter, did it; it broke up frequently?—A. It broke up in the spring.

Q. How did you cross, then?—A. We had to do the best we could.

Q. There were ferries across were there not, in some places?—A. I did not see any ferries when I made those trips.

Q. Those trips were made early in January?—A. January and February.

Mr. BLISS. If each trip took nine days he could not make them all in January.

Q. Did you make three round trips?—A. Yes, sir; I made three round trips.

By Mr. BLISS:

Q. You mean by three round trips that you left Fort Keogh three times and arrived at Bismarck, and that you left Bismarck three times and came back?—A. I left Fort Keogh and Bismarck three times and back to Keogh.

By Mr. HINE:

Q. Were you not detained on all those trips by the breaking up of the rivers?—A. I was detained once on the Little Missouri before I quit driving clear through.

Q. You know nothing personally about the number of men and horses on that route I presume, except what you happened to see?—A. No, sir; I do not.

By Mr. BLISS:

Q. But you saw the number of horses that were on the route when you were going clear through?—A. Yes, sir.

By Mr. HINE:

Q. That is, you saw those that happened to be in sight. I presume that is what you mean?—A. I don't know how you could get them out of sight. We passed everything on the road or at the stations.

Q. You did not take any pains to keep count, did you?—A. No, sir; only the first trip through.

Q. Did you then count them?—A. Yes, sir; I did.

Q. That was the 1st day of January?—A. That was the first, and afterwards on my way through.

By Mr. BLISS:

Q. How much mail in weight did you have during the month of January when you ran all the way through?—A. Well, sir, the general run of mail was from fifty to one hundred and twenty-five pounds.

Q. Was it larger going east or going west?—A. It was larger going west.

By Mr. HINE:

Q. Why were you discharged; do you recollect?—A. I never knowed it to this day; probably Mr. Williamson can tell you there.

Mr. HINE. You could not agree very well. That is all.

By Mr. BLISS:

Q. Did you have any trouble with them?—A. No, sir; not a bit in the world.

JOHN WASHINGTON COLE sworn and examined.

By Mr. BLISS:

Q. Where do you live?—A. Miles City, Montana.

Q. How long have you lived in Montana?—A. It will be two years in August.

Q. Did you have anything to do with the mail route from Bismarck to Fort Keogh?—A. I worked on it awhile, sir.

Q. When did you commence working on it?—A. The last days of April or the first of May, 1879.

Q. Where were you employed?—A. I was first employed at Bismarck.

Q. Where did you first go to work?—A. I went out about thirty-three or thirty-four miles, and kept a station about six weeks.

Q. At what place?—A. Coal Bank.

Q. How long did you keep station there?—A. About six weeks.

Q. Then where did you go to?—A. I went from there out to Pennell Station, and went to driving from there to Powder River.

Q. How far is that?—A. They call it sixty-three miles.

Q. How long did you drive there?—A. About six weeks.

Q. When you were driving, what was the number of trips per week?—A. Three trips per week.

Q. After you left there, where did you go to?—A. From Powder River to Fort Keogh.

Q. When you were driving from Powder River to Fort Keogh, what was the number of trips?—A. Six times a week.

Q. Then you left Pennell when they commenced six trips?—A. I did, the 16th day of August, 1880.

Q. Where did you say you drove when the six trips commenced?—A. From Powder River to Fort Keogh.

Q. What distance is that?—A. We have always called it forty miles: two and a half miles above Miles City.

Q. Did you use to drive at nights?—A. No, sir; only in the day-time, except when we were caught behind and had to run nights.

Q. How many horses were used when you drove three trips a week from Pennell to Powder River?—A. Eight horses.

Q. How many drivers?—A. Two.

Q. When you drove six trips a week from Powder River to Fort Keogh, how many horses did you use?—A. Eight horses.

Q. How many men?—A. Two.

Q. Were there any extra horses?—A. One.

Q. At each place?—A. No, sir; there was one extra horse between Powder River and Fort Keogh most of the time. There was a while there was not any.

Q. Were you ever at O'Fallon's Creek Station?—A. Yes, sir; I drove right by there.

Q. That is between Pennell and Powder River?—A. Yes, sir.

Q. While you were employed between Pennell and Powder River, was the number of stock increased at all?—A. No, sir.

Q. While you were employed between Powder River and Fort Keogh was the number of stock increased?—A. Not after I went on the route. They were put on when I went there. There was no increase after that on that route.

Q. Did the drivers, at that time, take care of their own stock, or have somebody take care of it?—A. They took care of it at each end of the division; the home station as we called it.

Q. What was the station or drive east from Pennell?—A. The first home station was Beaver.

Q. How far was that?—A. I think they call it fifty-seven miles.

Q. Do you know how many horses there were on that route?—A. There were three teams; six horses.

Q. How many drivers?—A. One when it ran three times a week.

Q. How was it when they ran six times a week?—A. Then they had just double; two drivers.

Q. Double the horses?—A. Yes, sir; that is from Pennell to Beaver.

Q. Did you go over the entire route at any time?—A. Once only.

Q. When was that?—A. That was in the last of June when I went west to take this line from Pennell to Powder River. I went over the route then.

By Mr. TOTTEN:

Q. What year?—A. Eighteen hundred and seventy-nine.

By Mr. BLISS:

Q. You went the whole length of the route?—A. Not the whole length then. I had come up previous to this from Bismarck to Coal Bank and stopped there about six weeks and discontinued that station then, and went to Pennell Station and went driving from there to Powder River.

Q. At that time, do you know how many horses there were on the route between Coal Bank and Pennell?—A. I don't believe I do. I know we talked about the amount of stock there was there. I didn't see them, and of course I would hate to say I did know. I know what was the calculation at that time.

Q. How many did you know of being there?—A. We counted them up when we were talking about it, and calculated there was thirty-eight head between Bismarck and Fort Keogh in actual service at that time.

Mr. TOTTEN. You are not answering the question. He asked you how many you knew of.

The WITNESS. I would not say, because I did not see them.

Q. You did not see as many as that?—A. Of course there was animals that I did not see, as I passed part of the way in the night.

Q. You said you calculated with somebody who was here; who was that?—A. You remember his name.

Q. Who was it?—A. Mr. Bishop. You know him. He will know, probably.

Q. When do you say you stopped driving from Powder River to Fort Keogh?—A. I think it was the 16th day of August, 1879. I went driving from Powder River to Keogh at the same time there was six trips a week put on.

Q. When you left Powder River to go to Keogh, did you always connect with the mail from the East?—A. Through the summer season we did.

Q. How in the winter?—A. In the winter we did not make connection always.

Q. Did you not wait until the mail arrived there?—A. We waited there twelve hours, and if there was no mail we ran into Keogh and ran out in the morning. That was our instructions.

Q. Did that happen often?—A. Sometimes it did in bad storms in the winter.

Q. How often did it happen in a winter?—A. Three or four times.

Mr. BLISS. That is all.

Mr. HINE. That will do.

WILBUR H. SWIFT, sworn and examined.

By Mr. BLISS:

Q. Where do you live?—A. Miles City, Montana.

Q. How long have you lived there?—A. A little over three years.

Q. Have you had anything to do with the mail route from Bismarck to Fort Keogh?—A. I worked on it.

Q. For whom?—A. Vaile, Miner & Co.

Q. When?—A. I commenced to work the 8th of May, 1879.

Q. How long did you continue?—A. Until the 1st of December, 1880.

Q. What did you first do?—A. I kept station at Spring Ranch.

Q. Where is Spring Ranch?—A. About sixty miles from Bismarck.

Q. How long did you stay there?—A. About seven or eight days.

Q. What did you do then?—A. I went on to Pennell Station and drove from there to Powder River.

Q. How often did the mail run at that time?—A. Three times a week.

Q. What time did the mail leave Bismarck in the morning?—A. About 8 o'clock or 9.

Q. Where was the first station?—A. At Hart River.

By Mr. HENKLE:

Q. Are you speaking from your own knowledge?—A. Yes, sir; it was then. I went over the road then.

Q. Do you speak from your own knowledge with regard to the time it started?—A. That was time it started, the mornings I left. I don't know whether it was regular or not. That is what I heard. It started then, I think, about 8 o'clock.

By Mr. BLISS:

Q. What time did you get to Muddy that day?—A. About 4 o'clock.

Q. How many drivers did you have going to Muddy?—A. One.

Q. How many horses?—A. Six.

Q. Did they, at that time, run nights?—A. Yes, sir; there was two night drivers.

Q. Did they start from Muddy the afternoon that the mail arrived there?—A. Yes, sir.

Q. Where did it go to?—A. It went to Green River.

Q. What time did it get to Green River ?—A. It got there some time in the morning.

Q. Was that with a new driver ?—A. Yes, sir.

Q. How many horses between Muddy and Green River ?—A. There was eight.

Q. At Green River did you get a new driver ?—A. Yes, sir.

Q. And went how far with him ?—A. He went to Beaver.

Q. What time did he get to Beaver ?—A. About 4 or 5 o'clock in the evening.

Q. Did the mail go on or stop over night there ?—A. It staid over night there the night I went through.

Q. What time did it leave Beaver the next day ?—A. In the morning about 7 o'clock.

Q. How far did you go with it ?—A. I went to Pennell.

Q. How far was that from Beaver ?—A. Fifty-six or fifty-seven miles.

Q. What time did you get to Pennell ?—A. About four or five o'clock in the evening.

Q. Was there one driver all the way from Beaver to Pennell ?—A. Yes, sir.

Q. How many horses ?—A. Six, I believe.

Q. You staid at Pennell, did you not ?—A. I took the drive from there.

Q. What time did you leave Pennell ?—A. I left Pennell in the evening, about five or six o'clock.

Q. And drove to Powder River ?—A. Yes, sir.

Q. Getting there at what time ?—A. In the morning, from four to five or six o'clock.

Q. You did not go beyond that ?—A. No ; not at that time.

Q. Have you ever been out beyond there ?—A. Oh, yes ; I drove from Powder River to Miles City.

Q. When was that ?—A. I commenced driving some time in September.

Q. What year ?—A. Eighteen hundred and seventy-nine.

Q. What time did you leave Powder River ?—A. We left in the morning.

Q. What time did you get to Fort Keogh or Miles City ?—A. From twelve o'clock to four o'clock in the afternoon.

Q. How many horses were used there ?—A. There was eight when I was on it.

Q. Do you remember the time when they commenced running nights ?

The WITNESS. Where from ?

Mr. BLISS. Over any portion of the route.

A. They were running nights when I went onto the road.

Q. And continued that so long as you were there, did they ?—A. Yes, sir.

Q. While you were there, do you know of the stock being increased ?—A. Yes, sir ; there was stock increased in June.

Q. June of what year ?—A. Eighteen hundred and seventy-nine.

Q. How much ?—A. I don't know exactly.

Q. About how much ?—A. I have heard—

Mr. TOTTEN. [Objecting.] Oh, no.

A. [Continuing.] That is all I know. I saw two or three teams more coming up the road.

Q. Do you know whether the drivers were increased ?—A. They were increased when they commenced daily.

Q. When was that?—A. That was some time in August, I think; I don't know exactly.

Q. August, 1879?—A. Yes, sir.

Q. Where did you drive when you commenced daily?—A. I was driving from Pennell to Powder River.

Q. When they were driving daily, how many drivers were there on that distance, from Powder River to Pennell?—A. Three.

Q. How many horses?—A. There were twelve, I think, or fourteen.

Q. When did you finally quit?—A. The 1st of December, 1880.

Q. Just before you quit you were still driving on the route from Powder River to Fort Keogh were you?—A. Yes, sir.

Q. Did you always make connection at Powder River to go to Fort Keogh?—A. We did through the summer, generally.

Q. How was it in winter?—A. Well, there was sometimes in the winter when we had to go through without our mail.

Q. Was that a rare occasion, or how was it?—A. Well, I don't know how many times. There was several times through January and February and the last of December.

Q. Did you always have a mail out from Fort Keogh?—A. I did, I believe, every time.

Q. Why did you put the emphasis on the *I*? Do you know of any time when a carrier did not?—A. No.

CROSS-EXAMINATION.

By Mr. HINE:

Q. Do you know the number of men and horses on that route at any period of the route going over the whole length of the route?

The WITNESS. Do you want to know all the stock that was on the road?

Mr. HINE. Yes; what you know about it. If you know of your own knowledge of the number of men and animals on that route in 1879 or 1880, or any other time.

A. In 1879, as far as I know, I think there was about fifty head of stock.

Q. How do you know that? From your personal knowledge?—A. What I saw.

Q. Did you ever go over the whole line of the route more than one time?—A. No.

Q. At what distance of time did you go over it, part at one time and part at another?—A. It was from the 8th of May to the 17th that I went through to Powder River.

Q. You went over part of that route during the night, did you not?—A. I went over from the station at Spring Rauch to Green River in the night.

Q. What you know about it is as to the actual number of animals that were in use at the time you went over the route?—A. That is all.

Q. You do not know how many they had on it excepting the number of animals that they used when you passed over?—A. I saw all that was on the route, I think.

Q. You think you did?—A. Yes, sir.

Q. That was in June, 1879?—A. In May, 1879.

Q. Do you not know that there were over one hundred animals on that route in May, 1879, and June, 1879?—A. Well, there was some stock came up in June; I don't know how many.

By Mr. BLISS:

Q. When you said you thought you saw all that were on the route you included in the number all that you saw, did you?—A. Yes, sir.

WILLIAM J. BISHOP sworn and examined.

By Mr. BLISS:

Question. Where do you live?—Answer. Benson's Landing, Montana.

Q. Have you ever lived at Powder River?—A. Yes, sir.

Q. On the mail route from Bismarck to Fort Keogh?—A. Yes, sir.

Q. When did you live there?—A. I lived there from about the 1st of February, 1881, until last spring.

Q. What were you doing there?—A. I was keeping a saloon there.

Q. Were you ever a driver on that route?—A. Yes, sir.

Q. When?—A. I commenced driving for them the 19th of March, 1879.

Q. How long did you continue driving?—A. I think I drove until some time in October.

Q. Then, did you finally quit?—A. No, sir; I took a station.

Q. What station?—A. Hart Station.

Q. How long did you remain there?—A. I remained there until some time in March, 1880, I think.

Q. Did you finally leave and go somewhere else on the route?—A. I took some freighting then.

Q. You had nothing to do after that with the mail business?—A. No, sir.

Q. When you were a driver where did you drive from?

The WITNESS. The first time?

Mr. BLISS. Yes.

A. From Green River to Beaver.

Q. How far is that?—A. We call it about fifty-five miles.

Q. What time did you leave Green River?—A. I left there in the morning at 7 or 8 o'clock.

Q. What time did you get to Beaver?—A. Five or six o'clock in the afternoon.

Q. What time in the year did you say this was?—A. This was in the summer of 1879.

Q. Did you go on beyond Beaver, or did you lay over at Beaver?—A. I laid over at Beaver, I believe, on the tri-weekly service; I mean to say that I stopped at night there and started back in the morning.

Q. When there was a tri-weekly service between Green River and Beaver, how many horses were used on that section?—A. Six is all that I drove at any one time.

Q. Was there another driver on the section?—A. No, sir.

Q. How many extra horses did you have not in use at that time?—A. Well, sometimes there was one or two, and sometimes not any. The extras were moved around from one place to another, wherever they were most needed, as I understood it.

Q. When the route became six times a week, did you still drive between Green River and Beaver?—A. No, sir.

Q. Where did you drive then?—A. From Green River to Muddy.

Q. How far was that?—A. Fifty-one or fifty-two miles, I think they call it.

Q. Did you drive nights then?—A. Yes, sir.

Q. How many drivers were there on that section from Green River to Muddy?—A. Three.

Q. How many horses?—A. There was about fourteen head of mules.

Q. Does this number of horses that you speak of include the horses used for any other purpose than carrying the mail?—A. No, sir; simply for carrying the mail.

Q. How much of a mail was carried?—A. Well, it varied a great deal; the western mail was always the heaviest; generally two pretty well filled sacks going west.

Q. How many going east?—A. The same number of sacks, but not full.

Q. Was there any time when they ceased to have a lay over at Beaver?—A. I could not say as to that.

Q. You don't know about that?—A. I don't remember; I understood at the time that they ran right through on the daily service, and there was no lay over at Beaver.

Mr. TOTTEN. Don't tell us anything except what you know of your own knowledge.

The WITNESS. I don't know that.

Q. You said you kept the station at Hart at one time, did you not?—A. Yes, sir; the winter of 1879 and 1880.

Q. How many horses were there?—A. Part of the time six head standing there, and part of the time eight head.

Q. When you speak of standing there, what do you mean?—A. Ready for changing.

Q. They came in at night and went out?—A. Came in at night.

Q. And those head were used every day?—A. Yes, sir.

Q. They were there resting?—A. They were resting.

Q. Was that a station at which they changed coming both ways?—A. Yes, sir.

Q. Did that include the number necessary for changing?—A. For changing both ways.

Q. How many drivers used to come to Hart?—A. Well, there was two regular drivers, I believe; three I think; I would not be positive. There was some extras ran out there from Bismarck. In storms, when the regular drivers could not get around to make their regular drives, the mail would be sent out by extra drivers. I think there was three regular drivers.

CROSS-EXAMINATION.

By Mr. HINE:

Q. When you laid over at Hart Station, you laid over to catch a ferry-boat, did you not?—A. Yes, sir; the drivers laid over there generally from about 10 o'clock at night until 2 or 3 in the morning, and made a calculation to get to the ferry at Fort Lincoln at 5 o'clock.

Q. That ferry-boat ran with the Black Hills stage-coach, I suppose?—A. Yes, sir.

Q. I presume you have no knowledge of the number of men and animals, except on the line that you passed over yourself?—A. No, sir.

By Mr. BLISS:

Q. You know the number of men and animals that came to your station, do you not; whether you passed over the route or not?—A. Yes, sir.

EDWIN TOWNSEND sworn and examined.

By Mr. BLISS:

Question. Where do you live?—Answer. Powder River, Montana.

Q. How long have you lived there?—A. Three years and a half.

Q. What have you been doing there?—A. I kept station for the mail company.

Q. What mail company?—A. Vaile, Miner & Co.

Q. Are you still keeping station there?—A. No, sir.

Q. When did you begin to keep station?—A. In August, 1878.

Q. How long did you continue?—A. Two years and nine months.

Q. What have you been doing since?—A. Well, farming a little.

Q. When did you first go on that road?—A. July, 1878.

Q. With whom did you go?—A. I started out with Pennell's party.

Q. Where did you go to at first?—A. Well, we camped all along the road. When night came on we would camp.

Q. And you built stations?—A. Yes, sir.

Q. When you got to Powder River you took charge of the station?—A. No, sir; I did not at first.

Q. How long after the station was built at Powder River, was it that you took charge of it?—A. There was a man named Archie McMurdy took care of the station first.

Q. When you took the station how many horses were there at that station—standing horses?—A. Two teams.

Q. That is, four horses?—A. Yes, sir.

Q. How many trips were then made a week?—A. One trip.

Q. How was the mail carried, horseback or buckboard?—A. Buckboard.

Q. When were the number of trips increased to three times a week?—A. January, I think, 1878.

Q. Eighteen hundred and seventy-nine, you mean?—A. Eighteen hundred and seventy-nine.

By Mr. TOTTEN:

Q. Was it not 1880?—A. No, I think not.

The COURT. I think he is right.

Mr. BLISS. As he said he went to work in July, 1878, it is very clear it could not have been January, 1878.

By Mr. BLISS:

Q. When they were running one trip a week, did they run nights?—A. No, sir.

Q. Where did they lay over?—A. Well, they laid over at my place there.

Q. Is there any other place that you know of where they laid over?—A. Well, at O'Fallon's place.

Q. Those two of your own knowledge?—A. Yes, sir.

Q. When they commenced running three trips a week, did they run nights at the commencement.—A. I think not.

Q. When they ran six trips a week did they run nights?—A. Yes, sir.

Q. Did you know at any time while there of any increase in the amount of stock employed?—A. No, sir; only a few odd head.

Q. What do you mean by a few odd head?—A. There was one team.

Q. That is all that you know of?—A. All I know of in Bismarck.

By the COURT:

Q. What do you call a team?—A. Two head of horses.

By Mr. BLISS:

Q. [Resuming.] Do you know of any increase in the number of dri-

vers while you were there?—A. When they put on daily service there was an increase of drivers.

Q. How many did you know of?—A. There was one.

Q. When they were running one trip a week, what time did the mail leave Powder River to go in?—A. It left there early in the morning.

Q. It got in there from Fort Keogh the night before?—A. Yes, sir; sometimes they used to drive on to O'Fallon's Creek.

Q. When they were running three trips a week, what time did the mail leave at your place from Fort Keogh?—A. About four o'clock in the afternoon.

Q. What time did it leave to go East?—A. It left that evening.

Q. Then they did run nights on three trips a week?—A. I think they did.

Q. When they were running six trips a week, what time did the mail get there?—A. Between three and four o'clock.

Q. What time did they leave?—A. As soon as they could get the hitch-up.

Q. They left right off?—A. Yes, sir.

Q. When the mail came from the East on one trip a week, what time did it get to your station?—A. There was nothing regular about the time it did get there.

By Mr. TOTTEN :

Q. About what?—A. They used to get there Thursday and Wednesday night; came in any time.

By Mr. BLISS :

Q. Did they lay over there?—A. Yes, sir.

Q. They always laid over there; that was regular?—A. Well, they generally came there late.

Q. When did they leave to go on to Fort Keogh?—A. They left in the morning.

Q. Now, when they were running three trips a week, what time did the mails get there?—A. I do not know.

Q. You do not remember?—A. No, sir; I do not.

CROSS-EXAMINATION.

By Mr. HINE :

Q. Did you ever go over the whole line of that route in your life?—A. No, sir.

Q. Did you ever carry the mail on any portion of the route in your life?—A. I have carried it from Powder River to O'Fallon's Creek.

Q. That was fifty miles?—A. Forty.

Q. Do you know anything about that route except the station you were at, Powder River, and the distance that you have carried the mail?—A. No, sir.

Q. You do not know a thing outside of that?—A. And I do not pretend to know; no, sir.

Q. Exactly. How many miles is it from here to Powder River, where you live?—A. From where?

Q. You were summoned from what point to come here as a witness?—A. From Powder River.

Q. What distance is that from here?—A. I think about two thousand two hundred miles.

Q. How long have you been here as a witness?—A. I got here on the 13th of May.

Mr. HINE. I guess you have given us information enough for coming twenty two or three hundred miles, and for your stay here of two or three months. That is all.

ALVAH KETCHUM sworn and examined.

By **Mr. BLISS** :

Question. You were superintendent of the mail route between Bismarck and Fort Keogh in June, 1881, were you not ?—**Answer.** Yes, sir.

Q. When did you first become that ?—**A.** The 15th of April, 1879.

Q. You were employed by whom ?—**A.** L. P. Williamson, for Vaile, Miner & Co.

Q. Prior to being superintendent, had you anything to do with the route ?—**A.** Yes, sir.

Q. What ?—**A.** Carrying the mail.

Q. You were a mail-carrier ?—**A.** Yes, sir.

Q. How long ?—**A.** From July 21 until September 20.

Q. What portion of the route were you carrying the mail on ?—**A.** From Bismarck to Fort Keogh.

Q. You went through ?—**A.** Yes, sir.

Q. How many through trips did you make ?—**A.** I made two trips and a half.

Q. Do you mean round trips ?—**A.** Yes, sir.

Q. When was your first trip ?—**A.** I started on my first trip on the 21st of July. I took the mail from a second party and went through with it.

Q. What do you mean by taking the mail from a second party ?—**A.** I took the mail from a party that I met on the road.

Q. Where did you meet them ?—**A.** I met them about forty-four miles west of Bismarck.

Q. And you went from there where ?—**A.** To Fort Keogh.

Q. How did you get through—on horseback, or buckboard, or how ?—**A.** I had a pair of horses and a half-spring wagon.

Q. Did you drive those horses all the way through ?—**A.** Yes, sir.

Q. How long did it take you to get there ?—**A.** One of my horses got lame in the Bad Lands, and I was until the first day of August, when I arrived at Keogh.

Q. You say you became superintendent when ?—**A.** The 15th of April, 1879.

By the **COURT** :

Q. Just here, let me understand what you people in that country mean by the Bad Lands. What kind of lands are they ; are they named very well ?—**A.** They are portions of the country that have at some time gone through volcanic eruptions. That is the general supposition of the people there ; burnt-out coal leads, &c., extending for miles, to the Upper Missouri, for instance.

By **Mr. MERRICK** :

Q. Is there lava on the surface ?—**A.** Oh, no.

By **Mr. BLISS** :

Q. What kind of lands are they ?—**A.** Hills, ravines, and mountains. In some places you find burning coal now—large veins of coal burning.

By **Mr. MERRICK** :

Q. Still burning ?—**A.** Still burning ; yes, sir.

Q. How did they get afire?—A. By prairie fire.

Q. How long do you suppose they have been afire?—A. I could not say.

Q. For an indefinite period of time?—A. Yes, sir.

Q. And they are still burning?—A. Oh, yes.

By Mr. TOTTEN :

Q. Is there any vegetation?—A. Nothing but the coal—the underlaying of coal.

Q. No timber?—A. None except along on creek bottoms.

Q. Any stones?—A. Some rocks above the ledges of coal.

Q. Are these coal veins that are burning?—A. Yes, sir. You will find them all through there.

Q. How did they take afire?—A. By prairie fire it is supposed.

By Mr. MERRICK :

Q. That was before your day?—A. That was before my day; yes, sir.

By the COURT :

Q. How thick are the veins?—A. Sometimes three to five and eight feet. They vary.

Q. Is there any good soil there?—A. Yes, sir.

By Mr. MERRICK :

Q. It is too hot to cultivate?—A. Rather difficult cultivating some of it.

By the COURT :

Q. Are these lands extensive?—A. Yes, sir; all along the borders of the Missouri, the Yellowstone, and the Little Missouri.

By Mr. TOTTEN :

Q. Then they are good lands, are they not?—A. They are good productive lands for grass; but stock has generally to be driven one-sided to travel around on the hills.

By Mr. BLISS :

Q. After you ceased to drive through those two trips and a half, where did you drive?—A. I did not drive at all. I quit.

Q. And you were not connected with the route until the following April?—A. No, sir; not until the 26th of December.

Q. Of what year?—A. The following year, 1879.

Q. When you made those two trips you said once you took the same team through?—A. I went with one team going through. Coming back I found a change of stock at the Little Missouri. I met the outfit of Pennell.

Q. You met Pennell there with a change of stock?—A. Yes, sir; at the Little Missouri.

Q. And there you changed?—A. I changed stock, and then I again changed stock at Green River.

Q. Was that all the change you made?—A. No, sir; I changed again at Spring Ranch and again at the Coal Banks.

Q. Each time did you have two horses?—A. Yes, sir.

Q. Did you travel nights at that time?—A. No, sir; I traveled through the day and laid up at night; camped on the prairie.

Q. That was before the ranches were finished?—A. Yes, sir.

Q. Did you drive through at any time after the ranches were finished?—A. Yes, sir.

Q. When was that?—A. That was the second trip that I made; no, the ranches were not finished. They built part of the ranches going over, and then put in the interlay ranches coming back, and they were starting back and I met them at Powder River on my second trip; and then I went from Bismarck back to the Little Missouri, and there I met the outfit, and quit on the 20th of September that same year.

Q. At that time, when you made those two trips and a half, how many other drivers were there on the route?—A. There were two.

Q. How many horses were there on the route?—A. I could not say. There was the outfit of Mr. Pennell, and the fourteen out of the eighteen head of stock brought from Missouri; and then he furnished horses at different times out of his train.

Q. Then there were the fourteen animals that were bought in Missouri, and such a number additional as Mr. Pennell furnished?—A. Yes, sir.

Q. Were there any others besides that?—A. No others at that time.

Q. When, if ever, was the number increased?—A. The number was increased in the month of December.

Q. Of what year?—A. Of 1879.

Mr. HENKLE. Don't you mean 1878?

The WITNESS. Eighteen hundred and seventy-eight; yes, sir.

Q. [Resuming.] How much was it then increased?—A. It was then increased, or was at the time I commenced driving or commenced working again for the company, to thirty-four head of stock. Two of the thirty-four head were hauling freight, and the balance of the head, thirty two, were used on the line.

Q. How many trips were they then making?—A. They were then making, or endeavoring to make—it was pretty hard work to make it—three trips a week.

Q. How many drivers were there then used?—A. It would be hard for me to say. It was calculated six drivers would make it. We were then driving through to O'Fallon's Creek, and the drivers would make a trip and quit. But it was calculated that six drivers, when leaving daily, would make it.

Q. That was, you said, three trips a week?—A. Yes, sir.

Q. How was the mail then carried?—A. It was then carried by a single conveyance, one horse and a buckboard or a sledge.

Q. You changed your position some time in the spring of 1879, did you not?—A. April 15 my position was changed.

Q. And you became what, then?—A. I became managing agent or foreman of the route.

Q. In the affidavit you have made I see you speak of yourself as having been at some time assistant superintendent?—A. No, sir.

Q. Or manager of the road under Mr. Williamson?—A. It might be that way.

Q. Was that the time?—A. Yes; that was the time.

Q. Up to that time you had been the boss, had you not?—A. No.

Q. Who was over you?—A. Mr. F. B. Follett.

Q. On the 15th April, 1879, how many trips were they then running?—A. Three trips a week.

Q. When was it increased to six?—A. It was increased to six on the 10th day of August; I think it was the 10th; it might have been the 11th.

Q. When did they commence running nights?—A. They commenced running nights in April—somewhere about the 1st of April.

Q. Eighteen hundred and seventy-nine?—A. Yes, sir.

Q. Up to that time they laid over nights?—A. Yes, sir.

Q. How many lay-over places were there?—A. The lay-over places were where a man could get during the night.

Q. How many times did they lay over; they had ordinary ranches at which they laid over?—A. The ordinary drive was about fifty miles a day or fifty-five; that would be one-sixth of the way through.

Q. That means they went through in six days?—A. They went through in six days.

By the COURT:

Q. How does a man know the miles he has traveled?—A. Well, the military have what they call a roadometer which they attach to their wagons as they travel along over the country. But this line was run out in 1878.

Q. And the distance marked?—A. We had the distance between each station, from one end of the route to the other.

By Mr. BLISS:

Q. I think you said there was some increase in the stock in February, March, or April, 1879, or somewhere along there?—A. In the month of March, the 1st of March, there was received twenty-three head from Missouri, which came by car to Bismarck, and went on the route.

Q. And all those on the line remained there?—A. All those on the line remained there; yes, sir.

Q. How many were there of those before this twenty-three head came?—A. There was thirty-four head, or about that.

Q. Does that include the animals used in hauling supplies, &c., or is it outside of those?—A. That is outside with the exception of one team, two heads; that is for mail service.

Q. Then it was further increased some time afterwards, was it not, a number of horses?—A. Then, on the last of May, we received by the steamer Dakota fifty-eight head.

Q. What year was that?—A. That was in 1879.

Q. On the last of what?—A. On the last of May.

Q. That was before six trips a week commenced?—A. Yes, sir.

Q. What is the distance between stations?—A. From seventeen to twenty-two miles.

Q. Other than the three trips or two trips and a half that you made in July, 1878—A. [Interrupting.] July and August to the 20th of September.

Q. [Continuing.] Were you over the whole length of the route at any time until after you became manager, or whatever your title was?—A. I never was further than O'Fallon's Creek. I went to O'Fallon's Creek and returned from O'Fallon's Creek to Bismarck, and was afterwards assigned to the end of the trail, what was termed the end of the trail, from Bismarck to Muddy.

Q. When you were driving from Bismarck to Muddy, what time did you make?—A. It was calculated I was making the schedule time.

Q. What was that?—A. Sixty-five hours.

Q. When you were driving—

A. [Interrupting.] Yes; to the end of the route.

Q. When did you leave Bismarck?—A. At half-past 8 in the morning.

Q. What time did you get to Muddy?—A. At 4.30 or 5 o'clock in the afternoon.

Q. And laid over there?—A. I laid over, but the mail went on.

Q. The next morning you returned to Bismarck, getting to Bismarck in the evening?—A. Yes, sir.

Q. How many horses did you use in driving from Bismarck to Muddy?—A. I used six horses.

Q. That was on how many trips a week?—A. Three trips a week.

Q. When did you become manager?—A. The 15th of April, 1879.

CROSS-EXAMINATION.

By Mr. HINE:

Q. You spoke of having thirty-four horses in February, 1879?—A. Thirty-four; yes, sir.

Q. Those were horses which belonged to the company?—A. They were all owned by the company.

Q. Now, did you have any horses employed or hired from other persons?—A. Oh, yes.

Q. How many?—A. There were three teams employed on the Bismarck end.

Q. That would be six horses?—A. On the mail; yes, sir. Then there was the contract let to Messrs. Wringer & McMillan, of Miles City, who run the mail from Miles City to Powder River and O'Fallon's Creek. That is the reason I did not make my runs further than O'Fallon's Creek when I returned from Bismarck going through.

Q. How many horses did they have?—A. I do not know.

Q. What is the distance?—A. Seventy-six miles.

Q. And their contract commenced about what time?—A. Some time in January.

Q. Eighteen hundred and seventy-nine?—A. Yes, sir.

Q. January 1, 1879?—A. Somewhere about that; I could not say.

Q. And they run the mail between those points how long?—A. I couldn't say. I quit driving for that end of the road and I could not state.

Q. For several months at any rate?—A. Some time in the month of January or some time in February, but at what time I could not say.

Q. You spoke of the horses you hired on one end of the route. At any intermediate places or at the other end of the route did you have any hiring of horses?—A. No, not at the other end; not at the Fort Keogh end. At the Bismarck end we had three extra teams.

Q. You had to have teams to get grain along the road?—A. Yes, sir.

Q. How many did you have for that purpose; I mean independent of those you spoke of?—A. Independent of those spoken of there was an outfit sent out on the road by Mr. McManus. He had seven teams.

Q. That means fourteen horses?—A. Fourteen horses.

Q. Were there any more horses used for the purpose of running this business?

Mr. BLISS. What do you mean by running this business?

Mr. HINE. Well, for carrying the mail and operating the mail over that route; what additional horses?

A. There was an outfit employed to deliver grain at Powder River; they consisted of two four mule teams, and went by way of Buford, from the fact that they could not get over the road.

Q. Went by way of Buford from what point?—A. Bismarck.

Q. What distance is that around by Buford?—A. Well, I was never over the road, and I am sure I could not say.

Q. Buford is several hundred miles—A. [Interrupting.] North of the main line.

Mr. BLISS. Is it several hundred miles ?

The WITNESS. Not several hundred miles ; Oh, no. It is about three hundred and fifty, or three hundred and seventy-five miles.

By Mr. HINE :

Q. [Resuming.] Because they could not get through with freight teams I suppose ?—A. No, sir.

The COURT. You mean by freight teams, two horses ?

Mr. HINE. They could not carry freight over this route ?

The WITNESS. From the small amount of travel on it they could not get through. They had to go up by the Missouri River.

By Mr. HINE :

Q. [Resuming.] Were not these teams that went around by Buford eight-mule teams instead of four ?—A. Four-mule teams to each wagon.

Q. That would be eight mules to each wagon ?—A. Yes, sir.

Q. And how many wagons were used ?—A. Two wagons to each four-mule team ; four teams to a trail wagon.

By Mr. HENKLE :

Q. Sixteen mules ?—A. Yes, sir ; eight in each team.

Q. [By Mr. HINE.] Wasn't there another team from Bismarck delivering grain along this route, and necessarily used ?—A. Yes, sir.

Q. How many horses were used on that ?—A. Fourteen. Sanderson was at that time foreman of the road under Follett. Sanderson & Beal had four single teams ; that is, two mules to each team.

Q. That would be eight mules ?—A. Yes, sir.

Q. This was also during the time that they were running six times a week ?—A. Yes, sir ; in the months of January and February.

Q. Eighteen hundred and seventy-nine ?—A. Eighteen hundred and seventy-nine.

Q. Were they necessary during the winter months ?

Mr. BLISS. What ?

Mr. HINE. To deliver this freight ?—A. Yes, sir.

Q. [Resuming.] Now, you were superintendent down to what date ?—A. The 1st of July, 1881.

Q. That was down to about the time that the railroad was completed along there, was it not ?—A. Yes, sir ; I took the mail line, and took the mails running to Glendive in connection with the coaches to Miles City.

Q. During the month of June, 1879, can you tell the court and the jury how many horses the company used of its own on that line ?—A. I can give you the number of stock purchased and brought on the line at different times ? I have not figured it to see how much it would make.

Q. Well, figure it up by installments from June, 1879. You may call it off, and I will figure it for you ?—A. In the month of June, during Mr. Dorsey's administration running the route——

Q. [Interposing.] Eighteen hundred and seventy-nine we are speaking of ?—A. I am coming to that. We have to get this first.

Q. All right. Take your own way about it ?—A. There were thirty-four that Mr. Dorsey had. There was afterwards received from Missouri twenty-three head.

By Mr. HENKLE :

Q. After the change of administration there was twenty-three head ?—A. After the change of administration there was twenty-three head put on the line.

Q. And the thirty-four remained ?—A. Yes, sir. The last day of May we received by the steamer Dakota fifty-eight head.

By Mr. HINE :

Q. That was in 1879 ?—A. That was in 1879. In August, about the 20th or 25th somewhere, there were two more car-loads received of thirty-eight head. That was the amount of stock, except what was bought promiscuously afterwards, and during my time of running the road I bought forty-eight head.

By Mr. WILSON :

Q. That is what you call promiscuous purchasing ?—A. Yes, sir ; I purchased them to run the mail.

By Mr. HINE :

Q. And that is all there were in addition to what you hired ?—A. Oh, yes, sir ; those were discharged, and we had no further use for them.

Q. Some of these horses, of course, died ?—A. Yes, sir ; it would be something strange if they didn't, there were so many of them.

Q. Thirty or forty of them died ?—A. In the months of December and January, 1880 '81, I lost about thirty or thirty-five head from the distemper. That was why that additional stock was bought.

By Mr. BLISS :

Q. Which additional stock ?—A. The forty-eight head I spoke of.

By Mr. HINE :

Q. Now, Mr. Ketchum, you have had some experience in running the mail in that country. Will you tell us as to the comfort of carrying the mails through during the winter season in that country ?—A. Well, there isn't much pleasure about it.

Q. Men lost in the snow storms ?—A. Yes, sir.

Q. Will you describe to the court and jury about the snows there in 1879-'80 and 1880-'81 ?—A. It would be a pretty hard matter to describe them. It was very difficult for men to make their drives especially, and we had to abandon running nights except to get to stations.

Q. That was sometimes in the winter ?—A. Sometimes in the winter.

Q. Was everything done to make the time that was within the power of the men to do ?—A. Well, I always felt a clear conscience that I had always done everything I could to get through. I could not have done any more anyhow. Men would get lost and lay out and camp out at night.

Q. Were Indians troublesome in 1878 and 1879 ?—A. Not until 1880.

Q. How were they then ?—A. On the 28th of May, 1880, I had two men killed, two horses shot, and four head of mules run off from Beaver Station.

Q. The Indians were infesting that country, though, in 1878 and 1879, were they not ?—A. Yes, sir ; but they never happened to bother us, except we lost stock several times from the station. We did not know whether it was white Indians or red Indians that ran them off.

By Mr. MERRICK :

Q. Do you have white Indians out there ?—A. Oh, yes ; plenty of them. They would steal more stock than the red Indians would.

By Mr. HINE :

Q. How about being compelled to employ men as escort for the mails ?—

A. Well, I was speaking of the Indians. I will answer the other question first in full. Again on the 12th of July, 1880, another man, by the name of Friez, was also killed and the stock taken away, and it was very difficult to get men to run the route, to drive or to keep ranches. The consequence was, that I had to double my drivers and arm them with guns and ammunition.

By Mr. BLISS:

Q. When was this?—A. In 1880; May 28 and July 12.

By Mr. HINE:

Q. How long did you keep your men doubled and keep them on?—

A. I could not say exactly now; in the neighborhood of three months I should judge; about one-quarter.

Q. Were you not liable to these Indian disturbances and the necessity of sending escorts with your men at all times?—A. We were, if we could not get men with sand enough to run them.

Q. You mean with courage enough?—A. Yes, sir; with grit enough. I have had a great many to throw up the lines and say they would not go, and I had to go myself or else put two or three men on to go.

Q. There are men of different minds in that country, I presume. Would different men differ very widely as to the number of horses and men necessary to run the mails over the route?

Mr. MERRICK. Hold on. Wait until the court tells you you may answer.

Mr. BLISS. Would not different people differ very much as to the number of men and animals necessary?

The COURT. That is a self-evident proposition. You need not prove it. That proposition need not be established by the testimony of any witness.

By Mr. HINE:

Q. [Resuming.] In your experience there in that country, what can you say in reference to estimating, in the first instance, as to the number of men and animals required, and of estimating it after you have had considerable experience in running the mail over that route?

The WITNESS. I do not know that I understand your question distinctly.

Mr. HINE. To save confusion, I will ask the reporter to read it.

The reporter then read the question as follows:

“Q. In your experience there in that country, what can you say in reference to estimating, in the first instance, as to the number of men and animals required, and of estimating it after you have had considerable experience in running the mail over that route?”

Mr. HINE. Will there be any difference in your calculation?

A. That would depend materially upon the difference in the time of the year and the season of the year.

Q. Now, for running it for four years, during winter and summer, what have you to say, on a schedule of sixty-five hours, of course, as to the number of horses that would be required?—A. In the summer time, during the season of the year that roads are good, to run a six days a week mail, it required sixteen drivers and about the same number of ranchmen. Then, during the haying season, it required two outfits, to put up and get ready for the winter, of about five to seven men each, and during the winter of 1880–1881, I had to double the drive, and put three drivers on each drive in order to make the day-

runs, except when I drove. That was the Powder River to Miles City, which made the seventeen drivers.

Q. Now how for doing necessary freighting for the mail route; I mean taking grain in, and such things?—A. We had, after the spring of 1879, five regular freight teams, three four-mule teams, and two single teams that were kept in appliance all the while on the Bismarck end of the route. The upper end of the road we supplied by boat up the river to carry during the season.

Q. That would require eight or ten or fifteen men more?—A. It would require considerable men more. It would require fifteen to twenty men with those teams.

Q. Now what other men would be needed to properly organize and conduct such a route as that?—A. I am sure I could not say.

Q. Blacksmiths, would they not?—A. Oh, yes; blacksmiths.

Q. And an agent at each end?—A. Yes, an agent at each end.

Q. And a wheelright?—A. A wheelright and a blacksmith at each end.

Q. You spoke of ranchmen at each station?—A. Yes, sir; and ranchmen at each station.

Q. Was there established one station that was distant twenty-two miles from another one; were they not generally about seventeen miles apart?—A. There were two stations from O'Fallon's Creek to Pennell—

Q. [Interposing.] Would they not average about fifteen miles apart?—A. From Lake Station to the Little Missouri they were twenty-two miles apart; some were seventeen and the rest were a little short of seventeen.

Q. In carrying such a mail as that at the rate of five miles an hour, wouldn't there be stations not more than twelve miles apart?—A. It would be more consistent if they were that.

Q. A person would not be liable to so many fines and deductions?—A. Probably not.

Q. To carry that mail winter and summer, at the rate of five miles an hour, how many men and horses would be required together with all the outfit necessary?—A. I used to calculate that I had from one hundred and thirty to one hundred and thirty-five available stock. There was always stock of course that you couldn't count on, that you had to turn out to recruit; but I always counted on one hundred and thirty to one hundred and thirty-five head.

Q. Able horses?—A. Able horses.

Q. And then during the winter you were fined nearly every quarter—every quarter for that matter?—A. I don't know anything about the fines.

Q. You did the best you could?—A. Yes, sir; I did not know anything about what was following, until afterwards.

Q. How many were in your army of reserve horses?—A. I usually had from one to three head to a station.

Q. To each station?—A. Yes, sir.

By Mr. BLISS:

Q. In addition to the one hundred and thirty-five?—A. Yes, sir.

By Mr. HINE:

Q. Those were able horses that you had as a reserve?—A. Yes, sir; and some were not able. If I had a disabled horse I would put him in the reserve until he would recruit up.

Q. How many disabled horses did you have?—A. That would be hard to tell.

Q. They would run from twenty to thirty and forty?—A. No, not that, excepting in the months of December and January. Then I had a great many. I had a hard time sometimes to get the mail through. I had a hard time to get stock, and I had to make a trip to Bismarck in order to get them. But generally we had but very few horses that were crippled or laid up, anything more than that they would get thin. They would get run down, and I would turn them out, and they would be fit for anything at any time.

Q. Outside of those months how many disabled horses would you have?—A. Not to exceed four or five at any time—that is, unfit for service.

Q. In addition to those you have spoken of at each station as reserves?—A. Yes, sir.

Q. Whenever the mail laid over at the stations did it lay any longer than was essential to connect with the ferry at the next river?—A. No, sir; we had to run in connection, on the Bismarck end, with the Saint Paul mails arriving from the Northern Pacific, and then we had to leave in connection with the Northern Transportation Company to Deadwood in the Hills, in order to cross on the ferry. Then in the morning in returning, when we made the night run, there would be lots of times we would be ahead of time generally, where we would lay at a station and wait for a certain hour to get the ferry boat.

Q. You would lay from 10 o'clock at night till about 2 o'clock in the morning?—A. Yes, sir; from 10 o'clock at night to 2 or 3 or 4 o'clock in the morning.

Q. You were not over the line of the route when they first built the ranches or stations?—A. Yes, sir.

Q. Then, what time was it that they went over the lines and began building stations?—A. It was about the 6th of January.

Q. Just describe to us how those stations were built the first time and also the second time, and how far apart.—A. They were built the first time alternately; that is, they would build one station and then go on to where they wanted the second station and build that, and then return and build the intermediate stations.

Q. And those intermediate stations were built at what time?—A. They were finished up after I quit the road, so I couldn't say.

Q. After you quit carrying the mail?—A. Yes, sir. And then in January McManus's outfit was sent out to finish and complete these stations.

Q. In January, 1879?—A. In January, 1879.

Q. Where did you get your timbers with which to build these stations?—A. From the surrounding country.

Q. How far did you draw the logs?—A. Some of them we drew from seven to eight to ten and fifteen miles.

Q. Did you not have to draw some forty miles?—A. Yes, sir; I drew some logs from O'Fallon's Creek to Powder River, thirty-eight miles, to build a ranch that was burnt down.

Q. Those stations were built of logs?—A. Yes, sir.

Q. Did you not have to have some months three or four or five men at these different log cabins or stations when the Indians were making or threatening incursions through that country?—A. About two was the most men.

Q. In addition to the escort for the mail?—A. Yes, sir.



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